

1987
IOWA CODE
SUPPLEMENT

Containing

Sections of the Laws of Iowa
of a General and Permanent Nature
Enacted, Amended, or Repealed by the
1987 Regular Session
and the 1987 First and Second
Extraordinary Sessions
of the

GENERAL ASSEMBLY OF THE
STATE OF IOWA



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PREFACE TO 1987 IOWA CODE SUPPLEMENT

This 1987 Iowa Code Supplement shows sections of the laws of Iowa enacted, amended, or repealed by the 1987 regular, first and second extraordinary sessions of the Iowa General Assembly, arranged in the numerical sequence followed by the 1987 Iowa Code. However, it does not show temporary sections, such as appropriation sections, which are not to be codified.

EFFECTIVE DATES. Except as otherwise indicated in the text or in a footnote, the new sections, amendments, and repeals were effective on or before July 1, 1987. See the 1987 Iowa Acts to determine specific effective dates not shown.

NOTES. A source note following each new or amended section refers to the bill file number and the appropriate chapter and section number in the Iowa Acts where the new section or amendment can be found in the form it had upon passage. Repeals are indicated in the form used in the 1987 Code. Following the source note or repeal may be a footnote. A footnote to an amended section usually refers only to the amended part and not necessarily to the entire section as printed. Many of the footnotes from the 1987 Code are not included but will be corrected as necessary and appear in the 1989 Code. Following the source note or footnote for a new or amended section is an explanatory note to indicate whether the section or a part of it is new, or was amended, stricken, stricken and rewritten, or renumbered.

EDITORIAL DECISIONS. If there were multiple amendments to a section or part of a section, all changes that were duplicative or otherwise did not appear to conflict were harmonized as required under section 4.11 of the Code. It was generally assumed that a strike or repeal prevailed over an amendment to the same material and did not create an irreconcilable conflict, and that the substitution of the correct title of an officer or department as authorized by law did not create a conflict. At the end of this Supplement are Code editor's notes which explain the major editorial decisions. Section 14.13 of the 1987 Code governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of the changes.

INDEX AND TABLES. A subject matter Index to new or amended sections, a table of the disposition of the 1987 Acts, and a table of corresponding sections from the 1987 Code to the 1987 Code Supplement also appear at the end of this Supplement.

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CHAPTER 2

GENERAL ASSEMBLY

2.10 Salaries and expenses—members of general assembly and lieutenant governor.

Members of the general assembly and the lieutenant governor shall receive salaries and expenses as provided by this section.

1. Every member of the general assembly except the speaker of the house and majority and minority floor leaders of the senate and house shall receive an annual salary of sixteen thousand six hundred dollars for the year 1989 and subsequent years while serving as a member of the general assembly. The majority and minority floor leaders of the senate and house, except the senate majority leader, shall receive an annual salary of twenty-two thousand nine hundred dollars for the year 1989 and subsequent years while serving in such capacity. In addition, each such member shall receive the sum of forty dollars per day for expenses of office, except travel, for each day the general assembly is in session commencing with the first day of a legislative session and ending with the day of final adjournment of each legislative session as indicated by the journals of the house and senate, except that in the event the length of the first regular session of the general assembly exceeds one hundred ten calendar days and the second regular session exceeds one hundred calendar days, such payments shall be made only for one hundred ten calendar days for the first session and one hundred calendar days for the second session. However, members from Polk county shall receive twenty-five dollars per day. Travel expenses shall be paid at the rate established by section 18.117 for actual travel in going to and returning from the seat of government by the nearest traveled route for not more than one time per week during a legislative session. However, any increase from time to time in the mileage rate established by section 18.117 shall not become effective for members of the general assembly until the convening of the next general assembly following the session in which the increase is adopted; and this provision shall prevail over any inconsistent provision of any present or future statute.

2. The lieutenant governor shall receive an annual salary of twenty-three thousand nine hundred dollars. Personal expense and travel allowances shall be the same for the lieutenant governor as for a senator. The lieutenant governor while performing administrative duties of the office of lieutenant governor when the general assembly is not in session or serving as the president of the senate during special sessions of the general assembly shall receive sixty dollars per diem and reimbursement for expenses incurred in performing such duties. The salary, per diem, and expenses of the lieutenant governor provided for under this subsection, including office and staff expenses, shall be paid from funds appropriated to the office of the lieutenant governor by the general assembly.

3. The speaker of the house and the senate majority leader shall receive an annual salary of twenty-three thousand nine hundred dollars for the year 1989 and subsequent years while serving as the speaker of the house or as the senate majority leader. Expense and travel allowances shall be the same for the speaker of the house and the senate majority leader as provided for other members of the general assembly.

4. When a vacancy occurs and the term of any member of the general assembly is not completed, the member shall receive a salary or compensation proportional to the length of the member's service computed to the nearest whole month. A successor elected to fill such vacancy shall receive a salary or compensation proportional to the successor's length of service computed to the nearest whole month commencing with such time as the successor is officially determined to have succeeded to such office.

5. The director of revenue and finance shall pay the travel and expenses of the members of the general assembly and the lieutenant governor commencing with

the first pay period after the names of such persons are officially certified. The salaries of the members of the general assembly and lieutenant governor shall be paid pursuant to any of the following alternative methods:

- a. During each month of the year at the same time state employees are paid.
- b. During each pay period during the first six months of each calendar year.
- c. During the first six months of each calendar year by allocating two-thirds of the annual salary to the pay periods during those six months and one-third of the annual salary to the pay periods during the second six months of a calendar year. Each member of the general assembly and the lieutenant governor shall file with the director of revenue and finance a statement as to the method the member selects for receiving payment of salary. The presiding officers of the two houses of the general assembly shall jointly certify to the director of revenue and finance the names of the members, officers, and employees of their respective houses and the salaries and mileage to which each is entitled. Travel and expense allowances shall be paid upon the submission of vouchers to the director of revenue and finance indicating a claim for the same.

6. In addition to the salaries and expenses authorized by this section, members of the general assembly shall be paid forty dollars per day, except the speaker of the house who shall be paid sixty dollars per day, and necessary travel and actual expenses incurred in attending meetings for which per diem or expenses are authorized by law for members of the general assembly who serve on statutory boards, commissions, or councils, and for standing or interim committee or subcommittee meetings subject to the provisions of section 2.14, or when on authorized legislative business when the general assembly is not in session. However, if a member of the general assembly or the lieutenant governor is engaged in authorized legislative business at a location other than at the seat of government during the time the general assembly is in session, payment may be made for the actual transportation and lodging costs incurred because of the business. Such per diem or expenses shall be paid promptly from funds appropriated pursuant to section 2.12.

7. If a special session of the general assembly is convened, members of the general assembly shall receive, in addition to their annual salaries, the sum of forty dollars per day for each day the general assembly is actually in special session, and the same travel allowances and expenses as authorized by this section.

87 Acts, ch 227, §14 SF 504

Item veto applied to part of subsections 1 and 2 and all of subsections 6 and 7 amendments
Subsections 1, 2, and 3 amended

2.36 Duties of committee.

The committee shall review the present and proposed uses of communications by state agencies and the development of a statewide communications plan. It shall meet as often as deemed necessary and annually shall make recommendations to the legislative council and the general assembly, accompanied by bill drafts to implement its recommendations.

87 Acts, ch 115, §1 SF 374

Section amended

2.42 Powers and duties of council.

The legislative council shall select its officers and prescribe its rules and procedure. The powers and duties of the council shall include, but not be limited to, the following:

1. To establish policies for the operation of the legislative service bureau, including the priority to be given to research requests and the distribution of research reports.

2. To appoint the director of the legislative service bureau for such term of office as may be set by the council.

3. To prepare reports to be submitted to the general assembly at its regular sessions.

4. To appoint interim study committees consisting of members of the legislative council and members of the general assembly of such number as the council shall determine. Nonlegislative members may be included on such committees when the council deems the participation of such members advantageous to the conduct of the study.

5. To conduct studies and evaluate reports of studies assigned to study committees and make recommendations for legislative or administrative action thereon. Recommendations shall include such bills as the legislative council may deem advisable.

6. To co-operate with other states to discuss mutual legislative and governmental problems.

7. To recommend staff for the legislative council and the standing committees in co-operation with the chairperson of such standing committees.

8. To recommend changes or revisions in the senate and house rules and the joint rules for more efficient operation of the general assembly and draft proposed rule amendments, resolutions, and bills as may be required to carry out such recommendations, for consideration by the general assembly.

9. To recommend to the general assembly the names and numbers of standing committees of both houses.

10. To establish rules for the style and format for drafting and preparing of legislative bills and resolutions.

11. To appoint the Code editor, establish the salaries of the persons employed in that office and establish policies with regard to the printing and publishing of the Iowa administrative code and bulletin, the Code of Iowa and session laws, including but not limited to: The style and format to be used in publishing such documents, the frequency of publications, the contents of such publications, the numbering system to be used in the Code and session laws, the preparation of editorial comments or notations, the correction of errors, the type of print to be used, the number of volumes to be published, recommended revisions of the Code and session laws, the letting of contracts for the publication of the Code and session laws, and any other matters deemed necessary to the publication of a uniform and understandable Code of laws.

12. To establish policies for the operation of the legislative fiscal bureau.

13. To appoint the director of the legislative fiscal bureau for such term of office as may be set by the council.

14. To hear and act upon appeals of aggrieved employees of the legislative service bureau, legislative fiscal bureau, computer support bureau, and the office of the citizens' aide pursuant to rules of procedure established by the council.

15. Authority to review and delay the effective dates of rules and forms submitted by the supreme court pursuant to section 602.4202.

16. To establish policies for the operation of the computer support bureau.

17. To appoint the director of the computer support bureau for a term of office set by the council.

87 Acts, ch 115, §2 SF 374

Subsection 15 stricken and subsections 16-18 renumbered as 15-17

CHAPTER 2A

COMMISSION ON COMPENSATION, EXPENSES, AND SALARIES FOR ELECTED STATE OFFICIALS

2A.4 Meetings—duties.

The commission shall elect its own chairperson from among its membership and shall meet on the call of the chairperson to review compensation and expenses

received by members of the general assembly and salaries of the other elective state officials. The commission shall review compensation and expenses paid to members of the general assembly and salaries paid to other elective state officials, and shall review compensation, expenses, and salaries paid for comparable positions in other states, the federal government, and private enterprise. Based on such review and other factors deemed relevant, the commission shall make its determination as to compensation and expense levels for members of the general assembly and as to salary levels for other elective state officials to be recommended to the governor and the members of the general assembly. No later than February 1, 1973, and each two years thereafter, the commission shall report to the governor and to the general assembly its recommendations for compensation and expenses for members of the general assembly and for salaries for other elective state officials.

87 Acts, ch 227, §32 SF 504
Section amended

CHAPTER 3

STATUTES AND RELATED MATTERS

3.7 Effective dates of Acts and resolutions.

1. All Acts and resolutions of a public nature passed at regular sessions of the general assembly shall take effect on the first day of July following their passage, unless some other specified time is provided in an Act or resolution.

2. All Acts and resolutions of a public nature which are passed prior to July 1 at a regular session of the general assembly and which are approved by the governor on or after July 1, shall take effect forty-five days after approval. However, this subsection shall not apply to Acts provided for in section 3.12 or Acts and resolutions which specify when they take effect.

3. All Acts and resolutions passed at a special session of the general assembly shall take effect ninety days after adjournment of the special session unless a different effective date is stated in an Act or resolution.

4. An Act which is effective upon enactment is effective upon the date of signature by the governor; or if the governor fails to sign it and returns it with objections, upon the date of passage by the general assembly after reconsideration as provided in article III, section 16 of the Constitution of the State of Iowa; or if the governor fails to sign or return an Act submitted during session, but prior to the last three days of a session, on the fourth day after it is presented to the governor for the governor's approval. An Act which has an effective date which is dependent upon the time of enactment shall have the time of enactment determined by the standards of this subsection.

5. A concurrent or joint resolution which is effective upon enactment is effective upon the date of final passage by both chambers of the general assembly, except that such a concurrent or joint resolution requiring the approval of the governor under section 262A.4 or otherwise requiring the approval of the governor is effective upon the date of such approval. A resolution which is effective upon enactment is effective upon the date of passage. A concurrent or joint resolution or resolution which has an effective date which is dependent upon the time of enactment shall have the time of enactment determined by the standards of this subsection.

6. Unless retroactive effectiveness is specifically provided for in an Act or resolution, an Act or resolution which is enacted after an effective date provided in the Act or resolution shall take effect upon the date of enactment.

7. Proposed legalizing Acts shall be published prior to passage as provided in chapter 585.

8. An Act or resolution under this section is also subject to the applicable provisions of sections 16 and 17 of article III of the Constitution of the State of Iowa.

87 Acts, ch 1, §1 SF 68
Amendment, effective February 19, 1987, applies to all Acts and resolutions of 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4 SF 68
Section amended

3.8 Publication of Acts. Repealed by 87 Acts, ch 1, §2. SF 68 See §3.7.

Section repealed effective February 19, 1987; applicable to all Acts and resolutions of the 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4 SF 68

3.9 Designation of papers. Repealed by 87 Acts, ch 1, §2. SF 68 See §3.7.

Section repealed effective February 19, 1987; applicable to all Acts and resolutions of the 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4 SF 68

3.10 Acts effective—certification. Repealed by 87 Acts, ch 1, §2. SF 68 See §3.7.

Section repealed effective February 19, 1987; applicable to all Acts and resolutions of the 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4 SF 68

3.15 Copies of Acts effective by publication. Repealed by 87 Acts, ch 1, §2. SF 68 See §3.7.

Section repealed effective February 19, 1987; applicable to all Acts and resolutions of the 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4 SF 68

3.16 Cost of publishing. Repealed by 87 Acts, ch 1, §2. SF 68 See §3.7.

Section repealed effective February 19, 1987; applicable to all Acts and resolutions of the 1987 regular session and subsequent sessions; 87 Acts, ch 1, §3, 4 SF 68

CHAPTER 4

CONSTRUCTION OF STATUTES

4.1 Rules.

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

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

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

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

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

5. *Highway—road.* The words “highway” and “road” include public bridges, and may be held equivalent to the words “county way”, “county road”, “common road”, and “state road”.
6. *Mentally ill.* The words “mentally ill person” include mental retardates, psychotic persons, severely depressed persons and persons of unsound mind. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or presumed to be incompetent in the absence of a finding of incompetence made pursuant to section 229.27.
7. *Issue.* The word “issue” as applied to descent of estates includes all lawful lineal descendants.
8. *Land—real estate.* The word “land” and the phrases “real estate” and “real property” include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.
9. *Personal property.* The words “personal property” include money, goods, chattels, evidences of debt, and things in action.
10. *Property.* The word “property” includes personal and real property.
11. *Month—year—A.D.* The word “month” means a calendar month, and the word “year” and the abbreviation “A.D.” are equivalent to the expression “year of our Lord.”
12. *Oath—affirmation.* The word “oath” includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word “swear” includes “affirm”.
13. *Person.* Unless otherwise provided by law “person” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
14. *Seal.* Where the seal of a court, public office or officer, or public or private corporation, may be required to be affixed to any paper, the word “seal” shall include an impression upon the paper alone, as well as upon wax or a wafer affixed thereto or an official ink stamp if a notarial seal.
15. *State.* The word “state”, when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words “United States” may include the said district and territories.
16. *Will.* The word “will” includes codicils.
17. *Written—in writing—signature.* The words “written” and “in writing” may include any mode of representing words or letters in general use. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. If a person is unable due to a physical handicap to make a written signature or mark, that person may substitute the following in lieu of a signature required by law:
- a. The handicapped person’s name written by another upon the request and in the presence of the handicapped person; or
 - b. A rubber stamp reproduction of the handicapped person’s name or facsimile of the actual signature when adopted by the handicapped person for all purposes requiring a signature and then only when affixed by that person or another upon request and in the handicapped person’s presence.
18. *Sheriff.* The term “sheriff” may be extended to any person performing the duties of the sheriff, either generally or in special cases.
19. *Deed—bond—indenture—undertaking.* The word “deed” is applied to an instrument conveying lands, but does not imply a sealed instrument; and the words “bond” and “indenture” do not necessarily imply a seal, and the word “undertaking” means a promise or security in any form.
20. *Executor—administrator.* The term “executor” includes administrator, and the term “administrator” includes executor, where the subject matter justifies such use.
21. *Numerals—figures.* The Roman numerals and the Arabic figures are to be taken as parts of the English language.

22. *Computing time—legal holidays.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the perfecting or filing of an appeal from the decision or award of a court, board, commission, or official falls on a Saturday, a Sunday, the first day of January, the third Monday in January, the twelfth day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday when any of the foregoing named legal holidays fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, the time shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday named in this subsection.

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

24. *Clerk—clerk's office.* The word "clerk" means clerk of the court in which the action or proceeding is brought or is pending; and the words "clerk's office" means the office of that clerk.

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

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

27. "Child" includes child by adoption.

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

29. "Preceding" and "following" when used by way of reference to a chapter or other part of a statute mean the next preceding or next following chapter or other part.

30. A quorum of a public body is a majority of the number of members fixed by statute.

31. "Rule" includes "regulation."

32. Words in the present tense include the future.

33. "United States" includes all the states.

34. The word "week" means seven consecutive days.

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

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

a. The word "shall" imposes a duty.

b. The word "must" states a requirement.

c. The word "may" confers a power.

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

38. "*Court employee*" and "*employee of the judicial department*" include every officer or employee of the judicial department except a judicial officer.

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

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

87 Acts, ch 115, §3 SF 374
Subsection 22 amended

CHAPTER 7B

JOB TRAINING PARTNERSHIP PROGRAM

7B.5 Title III grant awards.

1. Except for funds reserved for administration and for state administered statewide programs under Title III, the office of the governor shall distribute by grant awards to local service delivery areas, the remainder of federal funds allocated to the state under Title III of the federal Act and the state funds which are appropriated for Title III programs.

2. Service delivery areas proposing to conduct retraining shall coordinate with the local office of the division of job service of the department of employment services to identify individuals who will be eligible for the program.

87 Acts, ch 76, §1 HF 568
Subsections 2 and 3 stricken and former subsection 4 renumbered 2

CHAPTER 7C

PRIVATE ACTIVITY BOND ALLOCATION ACT

7C.2 Declaration of intent.

It is the intention of the general assembly in enacting this chapter to:

1. Implement section 146 of the Internal Revenue Code by providing a different formula for allocating the state ceiling among the various governmental units which are authorized to issue private activity bonds under the laws of this state.

2. Maximize the availability of the state ceiling to the issuers of private activity bonds within the state and thereby maximize the economic benefit to the citizens of the state from the issuance of private activity bonds.

87 Acts, ch 171, §1 HF 658
Subsection 1 amended

7C.3 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. “Allocation” means that portion of the state ceiling which is allocated and certified to a political subdivision hereby or by the governor’s designee pursuant to section 7C.8 with respect to an issue of bonds for a specific project or purpose.

2. “Bond” or “private activity bond” means a private activity bond as defined in section 141 of the Internal Revenue Code.

3. “Carryforward project” means a carryforward project or carryforward purpose as defined in section 146(f) of the Internal Revenue Code.

4. “First-time farmer” means a first-time farmer as defined in section 147(c) of the Internal Revenue Code.

5. “Governor’s designee” means the person, department, or authority designated by the governor to administer this chapter.

6. “Internal Revenue Code” means the Internal Revenue Code as defined in section 422.3.

7. “Political subdivision” means a political subdivision, authority, or department of the state which is authorized under the laws of the state to issue private activity bonds.

8. “Qualified mortgage bond” means a qualified mortgage bond as defined in section 143(a) of the Internal Revenue Code.

9. "Qualified small issue bond" means a qualified small issue bond as defined in section 144(a) of the Internal Revenue Code.

10. "Qualified student loan bond" means a qualified student loan bond as defined in section 144(b) of the Internal Revenue Code.

11. "State ceiling" means the same as defined in section 146(d) of the Internal Revenue Code.

87 Acts, ch 171, §2 HF 658
Section stricken and rewritten

7C.4 Maximum amount of bonds.

The aggregate principal amount of bonds which are subject to section 146 of the Internal Revenue Code which may be issued by all political subdivisions during a calendar year shall not exceed the state ceiling for that calendar year, except as provided in section 7C.8.

87 Acts, ch 171, §3 HF 658
Section amended

7C.4A Allocation of state ceiling.

For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes as follows:

1. Thirty percent of the state ceiling shall be allocated solely to the Iowa finance authority for the following purposes:

- a. Issuing qualified mortgage bonds.
- b. Reallocating the amount, or any portion thereof, to another qualified political subdivision for the purpose of issuing qualified mortgage bonds; or
- c. Exchanging the allocation, or any portion thereof, for the authority to issue mortgage credit certificates by election under section 25(c) of the Internal Revenue Code.

However, at any time during the calendar year the executive director of the Iowa finance authority may determine that a lesser amount need be allocated to the Iowa finance authority and on that date this lesser amount shall be the amount allocated to the authority and the excess shall be allocated under subsection 6.

2. Twelve percent of the state ceiling shall be allocated to bonds issued to carry out programs established under chapters 280A, 280B, and 280C. However, at any time during the calendar year the director of the Iowa department of economic development may determine that a lesser amount need be allocated and on that date this lesser amount shall be the amount allocated for those programs and the excess shall be allocated under subsection 6.

3. Sixteen percent of the state ceiling shall be allocated to qualified student loan bonds. However, at any time during the calendar year the governor's designee, with the approval of the Iowa student loan liquidity corporation, may determine that a lesser amount need be allocated to qualified student loan bonds and on that date the lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 6.

4. Five percent of the state ceiling shall be allocated to qualified small issue bonds issued for first-time farmers. However, at any time during the calendar year the governor's designee, with the approval of the Iowa agricultural development authority may determine that a lesser amount need be allocated to qualified small issue bonds for first-time farmers and on that date this lesser amount shall be the amount allocated for those bonds and the excess shall be allocated under subsection 6.

5. During the period of January 1 through October 25, five percent of the state ceiling shall be reserved for private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions.

6. a. The amount of the state ceiling not allocated under subsections 1 through 4, and after October 25, the amount of the state ceiling reserved under subsection 5 and not allocated, shall be allocated to all bonds requiring an

allocation under section 146 of the Internal Revenue Code without priority for any type of bond over another, except as otherwise provided in sections 7C.5 and 7C.11.

b. The population of the state shall be determined in accordance with the Internal Revenue Code.

87 Acts, ch 171, §4 HF 658
Effective May 29, 1987
NEW section

7C.5 Formula for allocation.

Except as provided in section 7C.4A, subsections 1 through 4, the state ceiling shall be allocated among all political subdivisions on a statewide basis on the basis of the chronological orders of receipt by the governor's designee of the applications described in section 7C.6 with respect to a definitive issue of bonds, as determined by the day, hour, and minute time-stamped on the application immediately upon receipt by the governor's designee. However, for the period January 1 through October 25 of each year, allocations to bonds for which an amount of the state ceiling has been reserved pursuant to section 7C.4A, subsection 5, shall be made to the political subdivisions submitting the applications first from the reserved amount until the reserved amount has been fully allocated and then from the amount specified in section 7C.4A, subsection 6.

87 Acts, ch 171, §5 HF 658
Section stricken and rewritten

7C.6 Application for allocation.

A political subdivision which proposes to issue bonds for a particular project or purpose for which an allocation of the state ceiling is required and has not already been made under section 7C.4A, subsections 1 through 4, must make an application for allocation before issuance of the bonds. The application may be made by the political subdivision or its representative, the beneficiary of the project or purpose, or by a person acting on behalf of the beneficiary. The application shall be submitted to the governor's designee, in the form prescribed by the governor's designee. The application shall contain, where appropriate, the following information:

1. Name and mailing address of the political subdivision.
2. Name of the chief elected or appointed executive officer of the political subdivision.
3. If the project to be financed by the bonds is not to be owned by the political subdivision, the name or description and location by mailing address or other definitive description of the project for which the allocation is requested.
4. Name and mailing address of both the initial owner, beneficiary, or operator of the project and an appropriate person from whom information regarding the project or purpose can be obtained.
5. Date of adoption by the governing body of the political subdivision of any initial governmental act with respect to the bonds.
6. Amount of the state ceiling which the political subdivision is requesting be allocated to the bonds.
7. Other information which the governor's designee deems reasonably required to carry out the purposes of this chapter.

87 Acts, ch 171, §6 HF 658
Section stricken and rewritten

7C.7 Certification of allocation.

Upon the receipt of a completed application pursuant to section 7C.6, the governor's designee shall promptly certify to the political subdivision the amount of the state ceiling allocated to the bonds for the purpose or project with respect to which the application was submitted. The allocation shall remain valid for thirty days from the date the allocation was certified, subject to the following conditions:

1. If the bonds are issued and delivered for the purpose or project within the thirty-day period or the forty-day extension period provided in subsection 2, the political subdivision or its representative shall within ten days following the issuance and delivery of the bonds or not later than October 25 of that year, if the bonds were issued and delivered on or before that date, file with the governor's designee, in the form or manner the governor's designee may prescribe, a notification of the date of issuance and the delivery of the bonds, and the actual principal amount of bonds issued and delivered. The filing of the notification shall be done by actual delivery or by posting in a United States post office depository with correct first class postage paid. If the actual principal amount of bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the bonds issued and delivered.

2. If the political subdivision does not reasonably expect to issue and deliver the bonds within the thirty-day period and evidence of an executed, valid and binding agreement to purchase the bonds is obtained from an entity with the legal ability to purchase and this agreement is filed with the governor's designee, the thirty-day allocation period is automatically extended for an additional forty-five days. The allocation period shall not be extended beyond that additional forty-five days.

3. The allocation is no longer valid unless the bonds are issued and delivered prior to December 24 or in the case of bonds described in section 7C.11 are issued and delivered prior to December 31 of the calendar year in which the allocation is certified, except as provided in section 7C.8.

87 Acts, ch 171, §7 HF 658
Amendment effective May 29, 1987
Section amended

7C.8 State ceiling carryforwards.

It is the intention of the general assembly that the maximum use be made of all carryforward provisions in the Internal Revenue Code. Therefore, if the aggregate principal amount of bonds, subject to section 146 of the Internal Revenue Code, issued by all political subdivisions in a calendar year is less than the state ceiling for that calendar year, a political subdivision may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The governor's designee shall determine the time and manner in which applications for an allocation of excess state ceiling shall be made for this purpose and may, in the designee's discretion, refuse any requests. However, the procedures for applications, the method of identifying, and the types permitted of carryforward projects shall comply with the carryforward provisions of the Internal Revenue Code and regulations promulgated under those provisions.

87 Acts, ch 171, §8 HF 658
Section amended

7C.9 Nonbusiness days.

If the expiration date of either the thirty-day period or the forty-five day extension period described in subsection 1 or 2 of section 7C.7 is a Saturday, Sunday or any day on which the offices of the state, banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or other previously described day.

87 Acts, ch 171, §9 HF 658
Section amended

7C.10 Resubmission of expired allocations.

If an allocation becomes no longer valid as provided in section 7C.7, the political subdivision may resubmit its application for the same project or purpose. The

resubmitted application shall be treated as a new application and preference, priority, or prejudice shall not be given to the application or the political subdivision as a result of the prior application.

87 Acts, ch 171, §10 HF 658
Section amended

7C.11 Priority allocations.

Notwithstanding any other provision of this chapter, the governor's designee shall give priority in allocation of the state ceiling not yet allocated to bonds which must be issued and delivered on or prior to December 31 of the calendar year in order for the interest on the bonds to be exempt from federal income taxation. Applications for an allocation with respect to these bonds shall be accompanied by an opinion of a nationally recognized bond counsel to the effect that the bonds must be issued and delivered on or prior to December 31 in that calendar year in order for the interest on the bonds to be exempt from federal income taxation.

87 Acts, ch 171, §11 HF 658
Section stricken and rewritten

7C.12 Authority and duties of the governor and governor's designee.

1. The governor shall designate a person, department, or authority to administer this chapter. The person, department, or authority so designated shall serve at the pleasure of the governor and shall be selected primarily for administrative ability and knowledge in the area of public finance.

2. In addition to the powers and duties specified in sections 7C.1 to 7C.11, the governor's designee:

a. Shall promulgate rules which are necessary or expedient to carry out the intent and purposes of the private activity bond allocation Act.

b. Shall maintain records of all applications filed by political subdivisions pursuant to section 7C.6 and all bonds issued pursuant to these applications including, but not limited to, a daily accounting of the amount of the state ceiling available for allocation, the amount of the state ceiling which has been allocated but not used, and the names, addresses, and telephone numbers of those political subdivisions for whom an allocation has been approved or disapproved and the amount of the allocation approved or disapproved for the political subdivisions.

87 Acts, ch 171, §12 HF 658
Section amended

CHAPTER 7F

OFFICE FOR STATE-FEDERAL RELATIONS

7F.1 Office for state-federal relations.

1. *Purpose.* The purpose of this section is to establish, as an independent agency, an office for state-federal relations which will develop a nonpartisan state-federal relations program accessible to all three branches of state government.

2. *Definition.* As used in this section, unless the context otherwise requires, "office" means the office for state-federal relations established pursuant to this section.

3. *Office established.* A state-federal relations office is established as an independent agency. The office shall be located in Washington D.C. and shall be administered by the director of the office who is appointed by the governor, subject to confirmation by the senate, and who serves at the pleasure of the governor. The office and its personnel are exempt from the merit system provisions of chapter 19A.

4. *Office duties.* The office shall:

a. Coordinate the development of Iowa's state-federal relations efforts which shall include an annual state-federal program to be presented to Iowa's congressional delegation, the sponsorship of training sessions for state government officials, and the maintenance of a management information system.

b. Provide state government officials with greater access to current information on federal legislative and executive actions affecting state government.

c. Advocate federal policies and positions which benefit the state or are important to state government.

d. Monitor federal budget policies and assistance programs and assess their impact on the state.

e. Strengthen the working relationships between state government officials and Iowa's congressional delegation.

f. Improve the state's ability to establish key contacts with federal officials, officials from other states, organizations, business groups, and professional associations in order to share information and form cooperative agreements.

87 Acts, ch 233, §126 SF 511

NEW section

Item veto applied to parts of new section

CHAPTER 8

BUDGET AND FINANCIAL CONTROL ACT

8.31 Quarterly requisitions—allotments—exceptions—modifications.

Before an appropriation for administration, operation and maintenance of any department or establishment shall become available, there shall be submitted to the director of the department of management, not less than twenty days before the beginning of each quarter of each fiscal year, a requisition for an allotment of the amount estimated to be necessary to carry on its work during the ensuing quarter. The requisition shall contain details of proposed expenditures as may be required by the director of the department of management subject to review by the governor.

The director of the department of management shall approve the allotments subject to review by the governor, unless it is found that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, in which event such allotments may be modified to the extent the governor may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of the fiscal year, and the director shall submit copies of the allotments thus approved or modified to the head of the department or establishment concerned, who shall set up such allotments on the books and be governed accordingly in the control of expenditures.

Allotments of appropriations made for equipment, land, permanent improvements, and other capital projects may, however, be allotted in one amount by major classes or projects for which they are expendable without regard to quarterly periods.

Allotments thus made may be subsequently modified by the director of the department of management at the direction of the governor either upon the written request of the head of the department or establishment concerned, or in the event the governor finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, upon the governor's own initiative to the extent the governor may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of the fiscal year; and the head of the department or establishment shall be given notice of a modification in the same way as in the case of original allotments.

Provided, however, that the allotment requests of all departments and establishments collecting governmental fees and other revenue which supplement a

state appropriation shall attach to the summary of requests a statement showing how much of the proposed allotments are to be financed from (1) state appropriations, (2) stores, and (3) repayment receipts.

The procedure to be employed in controlling the expenditures and receipts of the state fair board and the institutions under the state board of regents, whose collections are not deposited in the state treasury, is that outlined in section 421.31, subsection 6.

If the governor determines that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, the reductions shall be uniform and prorated between all departments, agencies and establishments upon the basis of their respective appropriations.

87 Acts, ch 115, §4 SF 374
Unnumbered paragraph 6 amended

8.39 Use of appropriations—transfer.

1. Except as otherwise provided by law, an appropriation or any part of it shall not be used for any other purpose than that for which it was made. However, with the prior written consent and approval of the governor and the director of the department of management, the governing board or head of any state department, institution, or agency may, at any time during the fiscal year, make a whole or partial intradepartmental transfer of its unexpended appropriations for purposes within the scope of such department, institution, or agency.

2. If the appropriation of a department, institution, or agency is insufficient to properly meet the legitimate expenses of the department, institution, or agency, the director, with the approval of the governor, may make an interdepartmental transfer from any other department, institution, or agency of the state having an appropriation in excess of its needs, of sufficient funds to meet that deficiency.

3. Prior to any transfer of funds pursuant to subsection 1 or 2 of this section or a transfer of an allocation from a subunit of a department which statutorily has independent budgeting authority, the director shall notify the chairpersons of the standing committees on budget of the senate and the house of representatives and the chairpersons of subcommittees of such committees of the proposed transfer. The notice from the director shall include information concerning the amount of the proposed transfer, the departments, institutions or agencies affected by the proposed transfer and the reasons for the proposed transfer. Chairpersons notified shall be given at least two weeks to review and comment on the proposed transfer before the transfer of funds is made.

4. Any transfer made under the provisions of this section shall be reported to the legislative fiscal committee on a monthly basis. The report shall cover each calendar month and shall be due the tenth day of the following month. The report shall contain the following: The amount of each transfer; the date of each transfer; the departments and funds affected; a brief explanation of the reason for the transfer; and such other information as may be required by the committee. A summary of all transfers made under the provisions of this section shall be included in the annual report of the legislative fiscal committee.

87 Acts, ch 115, §5 SF 374
Subsection 2 amended

CHAPTER 10A

DEPARTMENT OF INSPECTIONS AND APPEALS

10A.106 Divisions of the department.

The department is comprised of the following divisions:

1. Appeals and fair hearings division.
2. Audits division.

3. Investigations division.
4. Inspections division.
5. Gaming division.

87 Acts, ch 234, §420 HF 671
NEW subsection 5

ARTICLE VII

GAMING DIVISION

See Code editor's note

10A.701 Gaming division.

The gaming division shall combine and coordinate the supervision of pari-mutuel betting and the conducting of games of skill, games of chance, or raffles in the state. The division shall enforce and implement chapters 99B and 99D. The division is headed by the administrator of gaming who shall be appointed pursuant to section 99D.6. The state racing commission shall perform duties within the division as prescribed in chapter 99D.

87 Acts, ch 234, §421 HF 671
NEW section

CHAPTER 11

AUDITOR OF STATE

11.5A Audit costs.

When requested by the auditor of state, the department of management shall transfer from any unappropriated funds in the state treasury an amount not exceeding the expenses and prorated salary costs already paid to perform examinations of state executive agencies and the offices of the judicial department, and federal financial assistance, as defined in Pub. L. No. 98-502, received by all other departments for which payments by agencies have not been made. Upon payment by the departments, the auditor of state shall credit the payments to the state treasury.

87 Acts, ch 234, §422 HF 671
NEW section

11.29 Fees. Repealed by 87 Acts, ch 115, §83. SF 374

CHAPTER 12

TREASURER OF STATE

12.40 through 12.42 Reserved.

TARGETED SMALL BUSINESS PROGRAMS

12.43 Targeted small business linked deposit program created—definitions.

The treasurer of state shall adopt rules to implement a targeted small business linked deposit program to increase the availability of lower cost funds to inject needed capital into small businesses owned and operated by women or minorities, which is the public policy of the state. The rules shall be in accordance with the following:

1. *"Targeted small business"* means a business as defined in section 220.111, subsection 1.

2. A linked deposit shall only be approved in connection with a loan application for a targeted small business which has been certified pursuant to section 15.108, subsection 7, paragraph "c", subparagraph (4).

3. Loan applications for a targeted small business shall be for the purchase of land, machinery, equipment, or licenses, or patent, trademark, or copyright fees and expenses, but not inventory.

4. The maximum size of a targeted small business loan is one hundred thousand dollars per borrower for intangible property and two hundred fifty thousand dollars per borrower for tangible personal or real property.

87 Acts, ch 233, §128 SF 511
NEW section

12.44 Iowa satisfaction and performance bond program.

Agencies of state government shall be required to waive the requirement of satisfaction or performance bonds for targeted small businesses which are able to demonstrate the inability of securing such a bond because of a lack of experience. This waiver shall not apply to businesses with a record of repeated failure of substantial performance or material breach of contract in prior circumstances. The waiver shall be applied only to a project or individual transaction amounting to fifty thousand dollars or less, notwithstanding section 573.2. In order to qualify, the targeted small business shall provide written evidence to the department of economic development that the bond would otherwise be denied the business. The granting of the waiver shall in no way relieve the business from its contractual obligations and shall not preclude the state agency from pursuing any remedies under law upon default or breach of contract.

The department of economic development shall certify targeted small businesses for eligibility and participation in this program and shall make this information available to other state agencies.

Subdivisions of state government may also grant such a waiver under similar circumstances.

87 Acts, ch 233, §129 SF 511
NEW section

CHAPTER 15

DEPARTMENT OF ECONOMIC DEVELOPMENT

Department includes Iowa finance authority and Iowa economic protective and investment authority; §7E.7

Limited department authority to provide for a foreign visitor information center; leased exhibit space; a one-year agreement for representation of Iowa as a location for foreign investment; and encouragement of trade shows and missions;

87 acts, ch 141, §9-11 HF 636

See also §12.43 and 12.44 for targeted small business programs

List of assistance to be available to political subdivisions;

87 Acts, ch 233, §301 SF 511

Tourism program; 87 Acts, ch 233, §419 SF 511

15.104 Duties of the board.

The board shall:

1. Develop and coordinate the implementation of a twenty-year comprehensive economic development plan of specific goals, objectives, and policies for the state. This plan shall be updated annually and revised as necessary. All other state agencies involved in economic development activities shall annually submit to the board for its review and potential inclusion in the plan their goals, objectives, and policies.

2. Prepare a five-year strategic plan for state economic growth to implement the specific comprehensive goals, objectives, and policies of the state. All other

state agencies involved in economic development activities shall annually submit to the board for its review and potential inclusion in the strategic plan their specific strategic plans and programs. The five-year strategic plan for state economic growth shall be updated annually.

3. Develop a method of evaluation of the attainment of goals and objectives from pursuing the policies of the five-year and twenty-year plans.

4. Implement the requirements of chapter 73.

5. Approve the budget of the department as prepared by the director.

6. Establish guidelines, procedures, and policies for the awarding of grants or contracts administered by the department.

7. Review grants or contracts awarded by the department, with respect to the department's adherence to the guidelines and procedures and the impact on the five-year strategic plan for economic growth.

8. Adopt all necessary rules recommended by the director or administrators of divisions prior to their adoption pursuant to chapter 17A.

87 Acts, ch 17, §2 SF 271

Subsection 2 affirmed and reenacted, effective
April 17, 1987; legislative findings; 87 Acts, ch 17, §1, 12 SF 271

15.108 Primary responsibilities.

The department has the following areas of primary responsibility:

1. *Finance.* To provide for financial assistance to businesses, local governments, and educational institutions through loans and grants of state and federal funds to enable them to promote and achieve economic development within the state. To carry out this responsibility, the department shall:

a. Expend federal funds received as community development block grants as provided in section 8.41.

b. Provide staff assistance to the corporation formed under authority of sections 28.11 to 28.16 to receive and disburse funds to further the overall development and well-being of the state.

c. Provide financial assistance to local development corporations as provided for in sections 28.25 to 28.29.

d. Provide staff support and assistance to the Iowa high technology council established in sections 28.51 to 28.55.

e. Provide administration for the Iowa product development corporation created in sections 28.81 to 28.94.

f. Administer the funds appropriated from the community economic betterment account of the Iowa plan fund for economic development as provided in section 99E.32, subsection 2.

g. Administer the funds appropriated from the jobs now account of the Iowa plan fund for economic development as provided in section 99E.32, subsection 3, paragraph "d".

h. Administer the funds appropriated from the education and agriculture research and development account of the Iowa plan fund for economic development as provided in section 99E.32, subsection 4, paragraph "b".

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

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

b. Aid in the promotion and development of manufacturing in Iowa. The department may adopt, subject to the approval of the board, a label or trademark identifying quality Iowa products together with any other appropriate design or inscription and this label or trademark shall be registered in the office of the secretary of state.

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

(2) The department shall establish guidelines for granting authority to use the label or trademark to persons or firms who make a satisfactory showing to the department that the products meet the guidelines as constituting bona fide, quality Iowa products. The trademark or label use shall be registered with the department.

(3) A person shall not use the label or trademark or advertise it, or attach it on any manufactured article or agricultural product except as provided in this lettered paragraph.

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

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

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

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

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the merged area schools, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the department may establish periodic meetings with representatives from the merged area schools and the state board of regents institutions to develop this coordination. The merged area schools and the state board of regents institutions shall cooperate with the department in seeking to avoid duplication of economic development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The department shall annually report on the degree to which economic development activities have been coordinated and the degree to which there are future coordination needs, and the merged area schools and the state board of regents institutions shall be given an opportunity to review and comment on this report prior to its printing or release. The department shall also establish a registry of applications for federal funds related to management and technical assistance programs.

(2) Establish, manage, and administer the activities of the primary research and marketing center and the satellite centers as provided in section 28.101.

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

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

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

b. In addition to the duties specified in paragraph "a", the department may:

(1) Perform state and interstate comprehensive planning and related activities.

(2) Perform planning for metropolitan or regional areas or areas of rapid urbanization including interstate areas.

(3) Provide planning assistance to cities, other municipalities, counties, groups of adjacent communities, metropolitan and regional areas, and official governmental planning agencies.

(4) Assist public or private universities and colleges and urban centers to:

(a) Organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development.

(b) Support state and local research that is needed in connection with community development.

4. *Exporting.* To promote and aid in the marketing and sale of Iowa industrial and agricultural products and services outside of the state. To carry out this responsibility, the department shall:

a. Establish and carry out the purposes of the Iowa export trading company as provided in sections 28.106 to 28.108.

b. Prepare a report for the governor and the general assembly indicating the areas of export development in which this state could be more actively involved and how this involvement could occur. The initial report shall be available to the governor and members of the general assembly by December 1, 1986. Subsequent reports may be submitted as deemed necessary. The report shall include, but is not limited to:

(1) Information on the financial requirements of export trade activity and the potential roles for state involvement in export trade financing.

(2) Information on financing of export trade activity undertaken by other states and the results of this activity.

(3) Recommendations for a long-term export trade policy for the state.

(4) Recommendations regarding state involvement in export trade financing requirements.

(5) Other findings and recommendations deemed relevant to the understanding of export trade development.

c. Perform the duties and activities specified for the agricultural marketing program under sections 15.201 and 15.202.

d. Perform the duties and activities specified for the industrial and business export trade plan under section 15.231.

e. To the extent deemed feasible and in coordination with the board of regents and the area community colleges, work to establish a conversational foreign language training program.

f. To the extent deemed feasible, promote and assist in the creation of one or more international currency and barter exchanges.

g. Seek assistance and advice from the export advisory board appointed by the governor and the Iowa district export council which advises the United States department of commerce. The governor is authorized to appoint an export advisory board.

h. To the extent deemed feasible, develop a program in which graduates of Iowa institutions of higher education or former residents of the state who are residing in foreign countries and who are familiar with the language and customs of those countries are utilized as cultural advisors for the department and for Iowa businesses participating in trade missions and other foreign trade activities, and in which foreign students studying at Iowa institutions of higher education are provided means to establish contact with Iowa businesses engaged in export activities, and in which foreign students returning to their home countries are used as contacts for trading purposes.

5. *Tourism.* To promote Iowa's public and private recreation and tourism opportunities to Iowans and out-of-state visitors and aid promotional and development efforts by local governments and the private sector. To carry out this responsibility, the department shall:

a. Build general public consensus and support for Iowa's public and private recreation, tourism, and leisure opportunities and needs.

b. Recommend high quality site management and maintenance standards for all public and private recreation and tourism opportunities.

c. Coordinate and develop with the state department of transportation, the state department of natural resources, the state department of cultural affairs, and other state agencies public interpretation and education programs which encourage Iowans and out-of-state visitors to participate in recreation and leisure opportunities available in Iowa.

d. Coordinate with other divisions of the department to add Iowa's recreation, tourism, and leisure resources to the agricultural and other images which characterize the state on a national level.

e. Consolidate and coordinate the many existing sources of information about local, regional, statewide, and national opportunities into a comprehensive, state-of-the-art information delivery system for Iowans and out-of-state visitors.

f. Formulate and direct marketing and promotion programs to specific out-of-state market populations exhibiting the highest potential for consuming Iowa's public and private tourism products.

g. Provide ongoing long-range planning on a statewide basis for improvements in Iowa's public and private tourism opportunities.

h. Provide the private sector and local communities with advisory services including analysis of existing resources and deficiencies, general development and financial planning, marketing guidance, hospitality training, and others.

i. Measure the change in public opinion of Iowans regarding the importance of recreation, tourism, and leisure.

j. Provide annual monitoring of tourism visitation by Iowans and out-of-state visitors to Iowa attractions, public and private employment levels, and other economic indicators of the recreation and tourism industry and report predictable trends.

k. Identify new business investment opportunities for private enterprise in the recreation and tourism industry.

l. Cooperate with and seek assistance from the state department of cultural affairs.

m. Seek coordination with and assistance from the state department of natural resources in regard to the Mississippi river parkway under chapter 308 for the purposes of furthering tourism efforts.

n. Collect, assemble, and publish a list of farmers who have agreed to host overnight guests, for purposes of promoting agriculture in the state and farm tourism, to the extent that funds are available.

6. *Job training and entrepreneurial assistance.* To develop job training strategies which will promote economic growth and the creation of new job opportunities and to administer related programs including the federal Job Training Partnership Act. To carry out this responsibility, the department shall:

a. Coordinate and perform the duties specified under the job training partnership program in chapter 7B, the Iowa industrial new jobs training Act in chapter 280B, and the Iowa small business new jobs training Act in chapter 280C. In performing these duties, the department shall:

(1) Develop a job training delivery system which will minimize administrative costs through a single delivery system, maximize the use of public and private resources for job training initiatives, and assume the coordination of services and activities with other related programs at both the state and local level.

(2) Manage a job training program reporting and evaluation system which will measure program performance, identify program accomplishments and service levels, evaluate how well job training programs are being coordinated among themselves and with other related programs, and show areas where job training efforts need to be improved.

(3) Maintain a financial management system, file appropriate administrative rules, and monitor the performance of agencies and organizations involved with the administration of job training programs assigned to the department.

b. Develop job training strategies which will promote economic growth and the creation of new job opportunities. Specifically, the department shall:

(1) Work closely with representatives of business and industry, labor organizations, and educational institutions to determine the job training needs of Iowa employers, and where possible, provide for the development of industry-specific training programs.

(2) Promote Iowa job training programs to potential and existing Iowa employers and to employer associations.

(3) Develop annual goals and objectives which will identify both short-term and long-term methods to improve program performance, create employment opportunities for residents, and enhance the delivery of services.

(4) Develop job training and technical assistance programs which will promote entrepreneurial activities, assist small businesses, and help generate off-farm employment opportunities for persons engaged in farming.

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

(6) Develop policies and plans under the youth program provisions of appropriate programs which will emphasize employing Iowa youth on projects designed to improve Iowa parks and recreation areas, restore historical sites, and promote tourism. The department shall coordinate its youth program efforts with representatives of educational institutions to promote the understanding by youth of career opportunities in business and industry.

c. To the extent feasible, develop from available state and federal job training program resources an entrepreneurship training program to help encourage the promotion of small businesses within the state. The department of education and the state board of regents shall cooperate with the department on this program. The entrepreneurship training program shall coordinate its activities with other financial and technical assistance efforts within the department.

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

e. To the extent feasible, provide assistance to the department of human services in obtaining a waiver to provide self-employment opportunities to recipients of aid to families with dependent children.

f. Provide assistance to workers seeking economic conversion of closed or economically distressed plants located in the state including, but not limited to, the following:

(1) Evaluating the feasibility and economic viability of proposed employee-owned businesses.

(2) Working with the small business development centers to provide technical assistance and counseling services including, but not limited to, legal, tax, management, marketing, labor, and contract assistance to persons who seek to form employee-owned businesses.

(3) Assisting persons in obtaining financing for the purchase and operation of employee-owned businesses.

7. *Small business.* To provide assistance to small business, targeted small business, and entrepreneurs creating small businesses to ensure continued viability and growth. To carry out this responsibility, the department shall:

a. Receive and review complaints from individual small businesses that relate to rules or decisions of state agencies, and refer questions and complaints to a governmental agency where appropriate.

b. Establish and administer the regulatory information service provided for in section 28.17.

c. Aid in the development and implementation of the Iowa targeted small business procurement Act established in sections 73.15 through 73.21 and the

targeted small business loan guarantee program of the Iowa finance authority established in section 220.111. The duties of the director under this paragraph include the following:

(1) The director, in conjunction with the director of the department of management, shall publicize the procurement set-aside program to targeted small businesses and to agencies of state government, attempt to locate targeted small businesses able to perform set-aside awards, and encourage program participation. The director may request the cooperation of the department of general services, the department of transportation, the state board of regents, or any other agency of state government in publicizing this program.

(2) The director, in conjunction with the director of the department of management, shall publicize the loan guarantee program of the Iowa finance authority to targeted small businesses.

(3) When the director determines, or is notified by the head of another agency of state government, that a targeted small business is unable to perform procurement set-aside awards, the director shall assist the small business in attempting to remedy the causes of the inability to perform. In assisting the small business, the director may use any management or financial assistance programs available through state or governmental agencies or private sources.

The director, in conjunction with the director of the department of management and jointly with the universities under the jurisdiction of the state board of regents, the area community colleges, and the area vocational schools, shall develop and make available in all areas of the state, programs to offer and deliver concentrated, in-depth advice and services to assist targeted small businesses. The advice and services shall extend to all areas of business management in its practical application, including but not limited to accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

(4) The director shall establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement set-aside program. The procedure for determination of eligibility shall not include self-certification by a business. Rules and guidelines adopted pursuant to this section are subject to review and approval by the director of the department of management. The director shall maintain a current directory of targeted small businesses which have been certified pursuant to this subparagraph.

(5) The director shall submit an annual report to the governor and the general assembly relating progress toward realizing the goals and objectives of the procurement set-aside program and the loan guarantee program of the Iowa finance authority during the preceding fiscal year. The Iowa finance authority and the director of the department of management shall assist in compiling the data to be included in the report. The report shall include the following information:

(a) The total dollar value and number of potential set-aside awards identified and the percentage of total state procurements this reflects.

(b) The total dollar value and number of set-aside contracts awarded to targeted small businesses with appropriate designation as to the total number and value of set-aside contracts awarded to each small business, and the percentages of the total state procurements the figures of total dollar value and the number of set-asides reflects.

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

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

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

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

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

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

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

e. To the extent feasible, cooperate with the department of employment services to establish a program to educate existing employers and new or potential employers on the rates and workings of the state unemployment compensation program and the state workers' compensation program.

f. Study the feasibility of reducing the total number of state licenses, permits, and certificates required to conduct small businesses.

g. Encourage and assist small businesses to obtain state contracts and subcontracts by cooperating with the directors of purchasing in the department of general services, the state board of regents, and the department of transportation in performing the following functions:

(1) Developing a uniform small business vendor application form which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses which desire to sell goods and services to the state. This form shall also contain information which can be used to determine certification as a targeted small business pursuant to paragraph "c", subparagraph (4).

(2) Compiling and maintaining a comprehensive source list of small businesses.

(3) Assuring that responsible small businesses are solicited on each suitable purchase.

(4) Assisting small businesses in complying with the procedures for bidding and negotiating for contracts.

(5) Simplifying procurement specifications and terms in order to increase the opportunities for small business participation.

(6) When economically feasible, dividing total purchases into tasks or quantities to permit maximum small business participation.

(7) Preparing timely forecasts of repetitive contracting requirements by dollar volume and types of contracts to enhance the participation of responsible small businesses in the public purchasing process.

(8) Developing a mechanism to measure and monitor the amount of participation by small businesses in state procurement.

h. In addition, the department may establish a small business advisory council to:

(1) Advise and consult with the board and the department with respect to matters which are of concern to small business.

(2) Submit recommendations to the board relating to actual or proposed activities concerning small business.

(3) Submit recommendations for legislative or administrative actions.

(4) Review and monitor small business programs and agencies in order to determine their effectiveness and whether they complement or compete with each other, and to coordinate the delivery of programs and services aimed at small business.

(5) Initiate special small business economic studies as deemed necessary, including but not limited to analyses of trends and growth opportunities relative to small business.

(6) Provide other information or perform other duties which would be of assistance to small business.

i. Assist in the development, promotion, implementation, and administration of a statewide network of regional corporations designed to increase the availability of financing for small businesses.

8. *Miscellaneous.* To provide other necessary services, the department shall:

a. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced from them; power and water resources; transportation facilities; available markets; the availability of labor; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections of the state, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and other fields of research and study as the board deems necessary. This information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to those industries.

b. Apply for, receive, contract for, and expend federal funds and grants and funds and grants from other sources.

c. Except as otherwise provided in sections 19.33, 28.82, 28.87, 262.9, and 280A.23, provide that an inventor whose research is funded in whole or in part by the state shall assign to the state a proportionate part of the inventor's rights to a letter patent resulting from that research. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by the treasurer to the general fund of the state. However, the department in conjunction with other state agencies, including the board of regents, shall provide incentives to inventors whose research is funded in whole or in part by the state for having their products produced in the state. These incentives may include taking a smaller portion of the inventor's royalties or earnings than would otherwise occur under this paragraph or other provisions of the law.

d. Administer or oversee federal rural economic development programs in the state.

87 Acts, ch 101, §2 HF 379; 87 Acts, ch 106, §1 SF 493
 Subsection 6, paragraph d stricken
 Subsection 7, NEW paragraph i

15.110 Targeted small business loan and equity grant program.

A targeted small business loan and equity grant program is established within the Iowa department of economic development. The director shall adopt rules establishing the standards and procedures for distributing grants, providing loans, buying down the interest on loans, or buying down the principal on loans for newly created small businesses. The total amount of assistance to any one business shall not exceed five thousand dollars. Standards shall give top priority

to applicants who establish targeted small businesses in industries or fields for which no targeted small business has been certified pursuant to section 15.108, subsection 7, paragraph "c", subparagraph (4).

87 Acts, ch 233, §307 SF 511
NEW section

15.111 through 15.200 Reserved.

15.221 Iowa youth corps established. Repealed by 87 Acts, ch 101, §3. HF 379

15.222 Administration. Repealed by 87 Acts, ch 101, §3. HF 379

15.223 Emphasis and contributions. Repealed by 87 Acts, ch 101, §3. HF 379

15.227 Participant eligibility.

1. To be eligible for participation in a corps program a person shall be a resident of this state. In addition, each corps program shall have its own eligibility requirements as follows:

a. A person participating in the "*young adult program*" shall be between the ages of eighteen and twenty-four at the time of entry into the program, possess work skills at or above a minimum level prescribed by the regulating authority, and be an unemployed resident of the state.

b. A person participating in the "*in-school program*", the "*summer youth program*", or the "*volunteer program*" shall be enrolled in a secondary school or have been graduated from one no more than sixty days prior to entry into a corps program.

c. A person participating in the "*green thumb program*" shall be sixty years of age or older to be eligible for employment. A lower income person shall be preferred for employment. "*Lower income*" means a person who meets the requirements for "*lower income families*" described in section 8f, of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, Pub.L.No. 93-383, 201a.

2. Notwithstanding the provisions of chapters 19A, 96 and 97B, persons employed through any of the corps programs shall be exempt from merit system requirements, shall not be eligible for membership in the Iowa public employees' retirement system, and shall not be eligible to receive unemployment compensation benefits.

87 Acts, ch 101, §1 HF 379; 87 Acts, ch 233, §222 SF 511
Subsection 1, paragraph a amended
Subsection 1, paragraph c reenacted without change

15.241 Iowa "self-employment loan program".

The department shall establish, contingent upon the availability of funds authorized for the program, a "self-employment loan program," to be conducted in coordination with the job training partnership program and other programs administered under section 15.108, subsection 6, paragraph "c". The department may contract with local community action agencies or other local entities in administering the program, and shall work with the department of employment services and the department of human services in developing the program.

The self-employment loan program shall administer a low-interest loan program to provide loans to low-income persons for the purpose of establishing or expanding small business ventures. The terms of the loans shall be determined by the department, but shall not be in excess of five thousand dollars to any single applicant or at a rate to exceed five percent simple interest per annum. A self-employment loan program revolving loan fund shall be established within the

department. The department shall maintain records of all loans approved and the effectiveness of those loans in establishing or expanding small business ventures.

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

87 Acts, ch 233, §308 SF 511
Funds for program; not less than fifty percent
to targeted small businesses; coordination of programs; 87 Acts,
ch 233, §309
NEW unnumbered paragraph 3

15.258 through 15.260 Reserved.

PART 6

15.261 Purpose.

The purpose of this part is to facilitate the establishment and expansion of small businesses in this state by coordinating the formation of a statewide regional network of private sector small business economic development corporations, which will serve as guarantors of loans made by commercial lending institutions to small business entrepreneurs, and to stimulate economic growth for small business economic development through the partnership of state or federal small business development financing programs.

87 Acts, ch 106, §2 SF 493
NEW section

15.262 Definitions.

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

1. "*Small business*" means an enterprise located in this state, except an enterprise organized to practice a profession, as defined in section 496C.2, which is operated for profit and under a single management, and has fewer than twenty employees or an average annual gross income of less than three million dollars over the last three years.

2. "*Corporation*" or "*development corporation*" means a private sector small business economic development corporation organized under chapter 504A or organized for pecuniary profit under chapter 496A and includes development corporations organized under chapter 496B.

3. "*Region*" means a private sector small business economic development region.

4. "*Fund*" means the private sector small business economic development corporation fund established under section 15.263.

5. "*Contributor*" means a private entity which commits to contribute money to a development corporation, organized under chapter 504A, upon the call of the corporation.

6. "*Investor*" means a private entity which invests money in a corporation organized for pecuniary profit under chapter 496A.

87 Acts, ch 106, §3 SF 493
NEW section

15.263 Establishment of fund.

There is established in the office of the treasurer of state a private sector small business economic development corporation fund. The fund may include appropriations and other moneys for the purpose of loan guarantees under this part. All state moneys allocated to a corporation shall be from moneys previously appropriated to the fund.

Interest accrued by the fund shall be credited to and deposited in the fund.

87 Acts, ch 106, §4 SF 493
NEW section

15.264 Board duties and organization—fund.

The board shall:

1. Manage and administer through the office of the treasurer of state, state moneys appropriated to the fund.
2. Determine how the fund shall be allocated to the corporations. The board shall not allocate state moneys to a corporation in an amount that exceeds fifty percent of the amount committed to be contributed or invested in a corporation's account on call for the purposes of guaranteeing small business loans under this part.
3. Establish regions that have the same area boundaries as that of the regional coordinating councils established pursuant to section 28.101, subsection 2.
4. Facilitate the establishment of at least one corporation in each region of the state by contacting and enlisting the participation of potential contributors, investors, and economic development entities.
5. Actively cooperate with the corporation to seek procurement of moneys available through federal funding allocated for small business assistance programs.
6. Review, at regular and frequent intervals, all loans guaranteed by state moneys under this part in order to ensure the compliance of all parties with this part.
7. Supervise the monitoring of corporations which review the operations of businesses started or expanded through state funding made available under this part.
 8. a. Ensure that all operations of the board and corporations authorized under this part comply with the affirmative action requirements of chapter 19B.
 - b. Ensure that all loans guaranteed under this part are disbursed and collected without discrimination and in accordance with section 601A.10, subsection 2.
 - c. Ensure that the loans guaranteed under this part are disbursed and utilized in accordance with the targeted small business set-aside requirements of sections 73.15 through 73.21.
9. Adopt rules in accordance with chapter 17A as necessary or desirable for the supervision and the direction of the corporations for the uniform implementation of this part. These rules shall include the following:
 - a. Criteria for the making of loans which may be guaranteed by development corporations.
 - b. Requirements for the articles of incorporation and bylaws of the corporations.
 - c. Maximum amounts of loans and guarantees.
 - d. Maximum time for repayment schedules.
 - e. Conflict of interest prohibitions.
 - f. The provision for adequate reserves for loan guarantees.
 - g. The segregation of an accounting for moneys used for loan guarantees to the extent the moneys include state matching funds.
10. Meet at least once a month and as often as necessary.
11. Refrain from allocating any funds until at least one-third of the regions have established private sector small business economic development corporations.

87 Acts, ch 106, §5 SF 493
NEW section

15.265 Powers of corporations.

1. A corporation has all powers otherwise granted it by law and by its articles of incorporation and bylaws.
2. A corporation may develop a loan guarantee program, subject to approval by the board, if:
 - a. State matching funds are requested to guarantee loans made by private lending institutions to small businesses in order to establish, maintain, or expand their operations.

b. The loan guarantee program conforms to rules adopted by the board and, in the opinion of the board, promotes the purposes of this part.

3. A corporation shall have the following duties and responsibilities:

a. The management and administration of moneys allocated to it from the fund.

b. Monitoring the operations of businesses started or expanded through state funding made available under this part.

c. The active cooperation with the board to seek procurement of moneys available through federal funding allocations for small business assistance programs.

d. Ensuring that all loans guaranteed by a corporation under this part are disbursed and collected without discrimination and in accordance with section 601A.10, subsection 2. Particular attention shall be given to targeted small businesses.

e. Each corporation shall meet at least once a month and as often as necessary.

f. Establishing joint ventures with area regional coordinating councils when practical and whenever feasible.

g. Coordinate its activities with the small business development centers, institutions under the control of the boards of regents, private colleges and universities and other public entities that are interested in economic development.

87 Acts, ch 106, §6 SF 493
NEW section

15.266 Tax liability—credit.

Corporations organized in accordance with chapter 504A are exempt from the tax imposed under section 422.33. For purposes of avoiding federal tax liabilities, the articles of incorporation of the corporations created under this part shall be written in accordance with sections 504B.2 and 504B.3. Corporations organized for pecuniary profit are subject to taxes imposed under section 422.33.

87 Acts, ch 106, §7 SF 493
NEW section

15.267 Obligations of state— limitations.

Loan guarantees made by a development corporation for which the state has contributed matching funds under this part shall be supported only by the moneys committed or contributed to the corporation or the fund. A loan guarantee agreement made by a corporation, contributor, or investor is not an obligation of the state or any of its subdivisions, except to the extent of moneys previously allocated to the corporation from the fund. A corporation or the board shall not pledge the credit or taxing power of the state and shall not make its obligations payable out of any moneys other than those committed or contributed to the corporation or previously appropriated to the fund.

87 Acts, ch 106, §8 SF 493
NEW section

15.268 No restriction.

Nothing in this part shall be construed so as to restrict any corporation from fulfilling the purpose of this part if that corporation has not received state moneys under this part.

87 Acts, ch 106, §9 SF 493
NEW section

15.269 and 15.270 Reserved.

PART 7

15.271 Statement of purpose—intent.

1. The general assembly finds that:

- a. Highway travelers have special needs for information and travel services.
 - b. Highway travelers have a significant positive influence on the state's economy.
 - c. A principal goal of economic development in this state is to increase the influence which travel and hospitality services, tourism, and recreation opportunities have on the state's economic expansion.
 - d. Facilities and programs are needed where travelers can obtain information about travel and hospitality services, tourism attractions, parks and recreation opportunities, cultural and natural resources, and the state in general.
 - e. A program shall be established to plan, acquire, develop, promote, operate, and maintain a variety of welcome centers at strategic locations to meet the needs of travelers in the state. The program is intended to be accomplished by 1992.
2. The primary goals of a statewide program for welcome centers are to provide to travelers the following:
- a. High quality, accurate, and interesting information about travel in the state; national, statewide, and local attractions of all types; lodging, medical service, food service, vehicle service, and other kinds of necessities; and general information about the state.
 - b. Needed and convenient services, including but not limited to, restrooms; lodging information and event reservation services; vehicle services; and others. Services shall also include the distribution and sale of souvenirs, crafts, arts, and food products originating in the state; food and beverages; fishing, hunting, and other permits and licenses needed for recreation activities; and other products normally desired by travelers.
 - c. Settings that will convey a sense of being welcomed to the state through hospitable attitudes of personnel; high quality of site landscape architecture, architectural theme, and interior design of the buildings; special events that occur at the centers; and high levels of maintenance.

87 Acts, ch 178, §1 HF 540
NEW section

15.272 Statewide welcome center program—objectives and agency responsibilities—pilot projects.

The state agencies, as indicated in this section, shall undertake certain specific functions to implement the goals of a statewide program, including the pilot projects, for welcome centers.

- 1. The department and the state department of transportation shall jointly establish a statewide long-range plan for developing and operating welcome centers throughout the state. The plan shall be submitted to the general assembly by January 15, 1988. The plan shall address, but not be limited to, the following:
 - a. Integrating state, regional, and local tourism and recreation marketing and promotion plans.
 - b. Recommending a wide range of centers, including state-developed and state-operated to privately managed facilities.
 - c. Establishing design, service, and maintenance quality standards which all welcome centers will maintain. Included in the standards shall be a provision requiring that space or facilities be available for purposes of displaying and offering for sale Iowa-made products, crafts, and arts. The space or facilities may be operated by the department or leased to and operated by other persons.
 - d. Making projections of increased tourist spending, indirect economic benefits, and direct revenue production which are estimated to occur as a result of implementing a statewide welcome center program.
 - e. Projecting estimated acquisition, construction, exhibit, staffing, and maintenance costs.
 - f. Integrating electronic data telecommunications systems.
 - g. Identifying sites for maintaining existing centers as well as locations for new centers.

The departments may enter into contracts for the preparation of the long-range plan. The departments shall involve the department of natural resources and the department of cultural affairs in the preparation of the plan. The recommendations and comments of organizations representing hospitality and tourism services, including but not limited to, the regional tourism councils, convention and visitors bureaus, and the Iowa travel council, and others with interests in this program will be considered for incorporation in the plan. Prior to submission of the plan to the general assembly, the plan shall be submitted to the regional tourism councils, the convention and visitors bureaus, and the Iowa travel council for their comments and criticisms which shall be submitted by the department along with the plan to the general assembly.

2. The responsibilities of the department include the following:

a. Seeing to the acquisition of property and the construction of all new welcome centers including the pilot projects selected by the department pursuant to paragraph "e". In carrying out this responsibility the department may, but is not limited to, the following:

(1) Arrange for the state department of transportation to acquire title to land and buildings for use as and undertake construction of state-owned welcome centers. In acquiring property and constructing the welcome centers, including any pilot projects, the state department of transportation may use any funds available to it, including but not limited to, the RISE fund, matching funds from local units of government or organizations, the primary road fund, federal grants, and moneys specifically appropriated for these purposes.

(2) Contract with other state agencies, local units of government, or private groups, organizations, or entities for the use of land, buildings, or facilities as state welcome centers or in connection with state welcome centers, whether or not the property is actually owned by the state. If the local match required for pilot projects or which may be required for other welcome centers is met by providing land, buildings, or facilities, the entity providing the local match shall enter into an agreement with the department to either transfer title of the property to the state or to dedicate the use of the property under the conditions and period of time set by the department.

b. Providing for the operations, management, and maintenance of the state-owned and state-operated welcome centers, including the collection and distribution of tourism literature, telecommunication services, and other travel-related services, and the display and offering for sale of Iowa-made products, crafts, and arts.

c. Providing, at the discretion of the department, financial assistance in the form of loans and grants to privately operated information centers to the extent the centers are consistent with the long-range plan.

d. Developing a common theme or graphic logo which will be identified with all welcome centers which meet the standards of operations established for those centers.

e. Selecting the sites for the pilot projects. In selecting the pilot project sites, the following apply:

(1) Up to three sites may be located in proximity to the interstates and up to three sites may be located in proximity to the other primary roads. The department shall select at least one site which is in proximity to a primary road which is not an interstate.

(2) Proposals for the sites must be submitted prior to September 1, 1987 and shall contain a commitment of at least a one-dollar-per-dollar match of state financial assistance. The local match may be in terms of land, buildings, or other noncash items which are acceptable by the department.

(3) Priority shall be given to proposals that have the best local match, that are to be located where there is a very high number of travelers passing, and for which

the department, after consultation with the departments of transportation, natural resources, and cultural affairs, considers the chances of success to be nearly perfect.

(4) The department shall select the sites by September 15, 1987.

87 Acts, ch 178, §2 HF 540
NEW section

CHAPTER 15A

USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

Legislative findings; 87 Acts, ch 183, §1 SF 139

15A.1 Economic development—public purpose.

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

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

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

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

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

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

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

87 Acts, ch 183, §2 SF 139
NEW section

15A.2 Conflicts of interest.

If a member of the governing body of a city or county or an employee of a state, city, or county board, agency, commission or other governmental entity of the state, city, or county has an interest, either direct or indirect, in a private person for which grants, loans, guarantees, or other financial assistance may be provided by such governing board or governmental entity, the interest shall be disclosed to that governing body or governmental entity in writing. The member or employee having the interest shall not participate in the decision-making process with regard to the providing of such financial assistance to the private person.

Employment by a public body, its agencies, or institutions or by any other person having such an interest shall not be deemed an interest by such employee or of any ownership or control by such employee of interests of the employee's employer.

The word "*participation*" shall be deemed not to include discussion or debate preliminary to a vote of a local governing body or agency upon proposed ordinances or resolutions relating to such a project or any abstention from such a vote.

The designation of a bank or trust company as depository, paying agent, or agent for investment of funds shall not be deemed a matter of interest or personal interest.

Stock ownership in a corporation having such an interest shall not be deemed an indicia of an interest or of ownership or control by the person owning such stocks when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such person.

The word "*action*" shall not be deemed to include resolutions advisory to the local governing body or agency by any citizens group, board, body, or commission designated to serve a purely advisory approving or recommending function for economic development.

A violation of a provision of this section is misconduct in office under section 721.2. However, a decision of the governing board or governmental entity is not invalid because of the participation of the member or employee in the decision-making process or because of a vote cast by a member or employee in violation of this section unless the participation or vote was decisive in the awarding of the financial assistance.

87 Acts, ch 183, §3 SF 139
NEW section

CHAPTER 17

OFFICIAL REPORTS AND PUBLICATIONS

17.22 Price.

The publications listed in this section shall be sold at a price to be established by the legislative council. In determining these prices, the legislative council shall consider the costs of printing, binding, distribution, paper stock, and compilation and editing labor costs. The legislative council shall also consider the number of volumes to be printed, sold, and distributed in the determination of these prices.

1. Code or its supplements, the Iowa administrative code or its supplements, and the Iowa administrative bulletin.
2. Session laws.
3. Daily journals and bills.
4. Book of annotations to the Code.
5. Supplements to the book of annotations.
6. Tables of corresponding sections to the Code.
7. Iowa court rules.

The Iowa administrative code, its supplements, the Iowa administrative bulletin or the Code may be distributed with the Code or separately. There shall be established separate prices for the Iowa administrative code, for its supplements, for the Iowa administrative bulletin and for the Code.

When the Code is published in more than one volume the superintendent of printing may distribute each volume on order, after payment of the estimated purchase price for the set, when the volume becomes available.

87 Acts, ch 20, §1 SF 137
See Code editor's note
Unnumbered paragraph 1 amended

CHAPTER 17A

ADMINISTRATIVE PROCEDURE ACT

17A.12 Contested cases—notice—hearing—records.

1. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice in writing delivered either by personal service as in civil actions or by certified mail return receipt requested. However, an agency may provide by rule for the delivery of such notice by other means. Delivery of the notice referred to in this subsection shall constitute commencement of the contested case proceeding.

2. The notice shall include:

- a. A statement of the time, place and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular sections of the statutes and rules involved.
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

3. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

4. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

5. Unless precluded by statute, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing.

6. The record in a contested case shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the officer presiding at the hearing.

7. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

8. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

9. Unless otherwise provided by statute, a person's request or demand for a contested case proceeding shall be in writing, delivered to the agency by United

States postal service or personal service and shall be considered as filed with the agency on the date of the United States postal service postmark or the date personal service is made.

87 Acts, ch 71, §1 HF 193
NEW subsection 9

CHAPTER 18

GENERAL SERVICES DEPARTMENT

18.3 Duties of director.

The duties of the director shall include but not necessarily be limited to the following:

1. Establishing and developing, in co-operation with the various state agencies, a system of uniform standards and specifications for purchasing. When the system is developed, all items of general use shall be purchased through the department, except items used by the state department of transportation, institutions under the control of the board of regents, the commission for the blind, and any other agencies exempted by law.

Life cycle cost and energy efficiency shall be included in the criteria used by the department of general services, institutions under the state board of regents, the state department of transportation, the commission for the blind and other state agencies in developing standards and specifications for purchasing energy consuming products. As used in this paragraph "life cycle cost" means the expected total cost of ownership during the life of a product.

For purposes of this section, the life cycle costs of American motor vehicles shall be reduced by five percent in order to determine if the motor vehicle is comparable to foreign made motor vehicles. "American motor vehicles" includes those vehicles manufactured in this state and those vehicles in which at least seventy percent of the value of the motor vehicle was manufactured in the United States or Canada and at least fifty percent of the motor vehicle sales of the manufacturer are in the United States or Canada. In determining the life cycle costs of a motor vehicle, the costs shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or seventy-five thousand miles, whichever occurs first.

Preference shall be given to purchasing American made products and purchases from American based businesses if the life cycle costs are comparable to those products of foreign businesses and which most adequately fulfill the department's need.

The director may purchase items through the state department of transportation, institutions under the control of the board of regents and any other agency exempted by law from centralized purchasing. These state agencies shall upon request furnish the director with a list of and specifications for all items of office equipment, furniture, fixtures, motor vehicles, heavy equipment and other related items to be purchased during the next quarter and the date by which the director must file with the agency the quantity of items to be purchased by the state agency for the department of general services. The department of general services shall be liable to the state agency for the proportionate costs the items purchased for it bear to the total purchase price. When items purchased have been delivered, the state agency shall notify the director and after receipt of the purchase price shall release the items to the director or upon the director's order.

2. Administering the provisions of sections 18.114 to 18.121.

3. Administering the provisions of sections 18.26 to 18.103.

4. Providing for the proper maintenance of the state capitol, grounds, and equipment and all other state buildings, grounds, and equipment at the seat of government, except those referred to in section 601K.123, subsection 6.

5. Administering sections 18.132 to 18.135.
6. Establishing, supervising, and maintaining a central mail unit for the use of all state officials, agencies, and departments located at the seat of government.
7. Installing a records system for the keeping of records which are necessary for a proper audit and effective operation of the department.
8. Providing architectural services, contracting for construction and construction oversight for state agencies except for the board of regents, department of transportation, national guard, and natural resource commission. Capital funding appropriated to state agencies, except the board of regents, department of transportation, national guard, and natural resource commission, for property management shall be transferred for administration and control to the director of the department of general services.

9. Administering the provisions of section 18.18.

87 Acts, ch 225, §401 HF 631
NEW subsection 9

18.12 Duties—state buildings.

In addition to other duties the director shall:

1. See that all visitors, at proper hours, are properly escorted over capitol grounds and capitol buildings, free of expense.
2. Have at all times, charge of and supervision over the janitors, and other employees of the department in and about the capitol and other state buildings, except the buildings and grounds referred to in section 601K.123, subsection 6, at the seat of government.
3. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property under the person's control.
4. Keep in the director's office a complete record containing an itemized account of all state property, including furniture and equipment, under the director's care and control, and plans and surveys of the public grounds, buildings, and underground constructions at the seat of government.
5. Under the direction of the governor, provide, furnish, and pay for public utilities service, heat, maintenance, minor repairs, and equipment in operating and maintaining the official residence of the governor of Iowa.
6. At the time provided by law, make a verified report which shall cover all transactions for the preceding annual, fiscal or calendar period and show in detail:
 - a. All expenditures made on account of the department for public buildings and property.
 - b. The condition of all real and personal property of the state under the director's care and control, together with a report of any loss or destruction, or injury to any such property, with the causes thereof.
 - c. The measures necessary for the care and preservation of the property under the director's control.
 - d. Any recommendations as to methods which would tend to render the public service more efficient and economical.
 - e. Any other matter ordered by the governor.
7. Contract, with the approval of the executive council, for the repair, remodeling or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government and the institutions of the department of human services and the department of corrections for which no specific appropriation has been made, if the cost of repair, remodeling or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no specific appropriation has been made shall be paid from the fund provided in section 19.29.

8. Dispose of all personal property of the state under the director's control when it becomes unnecessary or unfit for further use by the state. Proceeds from the sale of personal property shall be deposited in the state general fund.

9. Lease all buildings and office space necessary to carry out the provisions of this chapter or necessary for the proper functioning of any state agency at the seat of government, with the approval of the executive council if no specific appropriation has been made. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 19.29.

When the general assembly is not in session, the director of general services may request funds from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, telephone costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 19.29 if it determines the agency or department has no available funds for these expenses.

10. Establish rental fees for space owned by the state and provided by the department to a state agency to which the general assembly has specifically appropriated funds to pay the rental fees.

The director shall notify each state agency provided space by the department to which an appropriation for the rental of that space has been made of the rental fee for the space. The fee shall be based on the cost of the space, services provided to the agency by the division of buildings and grounds, maintenance, utilities, administration, and other property management costs. The state agency shall pay the fee to the department in the same manner as other expenses of the state agency are paid. Fees collected shall be deposited in the general fund of the state.

11. Coordinate the leasing of buildings and office space by state agencies throughout the state and develop cooperative relationships with the state board of regents to promote the collocation of state agencies.

12. Perform all other duties required by law.

87 Acts, ch 233, §130 SF 511
Subsection 7 amended

18.18 State purchases—recycled products.

1. When purchasing paper products, the department of general services shall, wherever the price is reasonably competitive and the quality intended, purchase the recycled product.

2. The department of general services, in conjunction with the department of natural resources, shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with recovered materials.

3. The department of natural resources shall assist the department of general services in locating suppliers of recycled products and collecting data on recycled content purchases.

4. Information on recycled content shall be requested on all bids for paper products issued by the state and on other bids for products which could have recycled content such as oil, plastic products, compost materials, aggregate, solvents, and rubber products.

5. The department of general services, in conjunction with the department of natural resources, shall adopt rules and regulations to carry out the provisions of this section.

6. All state agencies shall fully cooperate with the departments of general services and natural resources in all phases of implementing this section.

87 Acts, ch 225, §421 HF 631
NEW section

18.19 through 18.25 Reserved.

18.101 Legislative journals and bills.

The daily journals of the general assembly and the printed bills shall be sent by the superintendent of printing by mail to subscribers. The journals and bills for both houses for any one session may be purchased for the sum fixed by the superintendent. The superintendent shall cause to be printed a sufficient number of copies to fill orders received and reported to the superintendent.

87 Acts, ch 115, §6 SF 374
Section amended

18.115 Vehicle dispatcher—employees—powers and duties.

In order to carry out the powers vested in the director by this chapter, the director of the department of general services shall appoint a state vehicle dispatcher and such other employees as may be necessary to carry out the provisions of this chapter. The state vehicle dispatcher shall serve at the pleasure of the director and shall not be governed by the provisions of chapter 19A. Subject to the approval of the director, the state vehicle dispatcher shall have the following duties:

1. The dispatcher shall assign to a state officer or employee or to a state office, department, bureau, or commission, one or more motor vehicles which may be required by the officer or department, after the officer or department has shown the necessity for such transportation. The state vehicle dispatcher shall have the power to assign a motor vehicle either for part time or full time. The dispatcher shall have the right to revoke the assignment at any time.

2. The state vehicle dispatcher may cause all state-owned motor vehicles to be inspected periodically. Whenever the inspection reveals that repairs have been improperly made on the motor vehicle or that the operator is not giving it the proper care, the dispatcher shall report this fact to the head of the department to which the motor vehicle has been assigned, together with recommendation for improvement.

3. The state vehicle dispatcher shall install a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the state vehicle dispatcher in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to the officer or employee, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the state vehicle dispatcher and forward the same to the dispatcher at the statehouse, giving the information the state vehicle dispatcher may request in the report. The state vehicle dispatcher shall each month compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history card on each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. It shall be the duty of the state vehicle dispatcher to call to the attention of the head of any department to which a motor vehicle has been assigned any evidence of the mishandling or misuse of any state-owned motor vehicle which is called to the dispatcher's attention.

4. The state vehicle dispatcher shall purchase all new motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the division for the blind in the department of human rights, and any other agencies exempted by law. Before purchasing any motor vehicle the dispatcher shall make requests for public bids by advertisement and shall purchase the vehicles from the lowest responsible bidder for the type and make of motor vehicle designated.

5. All used motor vehicles turned in to the state vehicle dispatcher shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of that department or agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the state vehicle dispatcher may, with the approval of the executive council, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design.

6. The state vehicle dispatcher may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under the dispatcher's supervision and which the dispatcher may cause to be stored in a public or private garage. If a pool is established by the state vehicle dispatcher, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the state vehicle dispatcher of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The state vehicle dispatcher may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the state vehicle dispatcher may assign one vehicle to make the trip.

7. The state vehicle dispatcher shall cause to be marked on every state-owned motor vehicle a sign in a conspicuous place which indicates its ownership by the state except cars requested to be exempt by the director of public safety or the director of the department of general services. All state-owned motor vehicles shall display registration plates bearing the word "official" except cars requested to be furnished with ordinary plates by the director of public safety or the director of the department of general services pursuant to section 321.19. The state vehicle dispatcher shall keep an accurate record of the registration plates used on all state cars.

8. The state vehicle dispatcher shall have the authority to make such other rules regarding the operation of state-owned motor vehicles, with the approval of the director of the department of general services, as may be necessary to carry out the purpose of this chapter. All rules adopted by the vehicle dispatcher shall be approved by the director before becoming effective.

9. All gasoline used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state car pools throughout the state, unless such purchases are exempted by the vehicle dispatcher. The vehicle dispatcher shall study and determine the reasonable accessibility of these state-owned sources for the purchase of gasoline. If these state-owned sources for the purchase of gasoline are not reasonably accessible, the vehicle dispatcher shall authorize the purchase of gasoline from other sources. The vehicle dispatcher may prescribe a manner, other than the use of the revolving fund, in which the purchase of gasoline from state-owned sources shall be charged to the department or agency responsible for the use of the automobile. The vehicle dispatcher shall prescribe the manner in which oil and other normal automobile maintenance for state-owned automobiles may be purchased from private sources, if they cannot be reasonably obtained from a state car pool. The state vehicle dispatcher may advertise for bids and award contracts for the furnishing of gasoline, oil, grease, and vehicle replacement parts for all state-owned vehicles. The state vehicle dispatcher and other state agencies, when advertising for bids for gasoline, shall also seek bids for ethanol-blended gasoline.

87 Acts, ch 145, §1 HF 621
Subsection 9 amended

18.133 Definitions.

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

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

2. “*Director*” means the director of the department of general services or the director’s designee.

87 Acts, ch 211, §1 SF 162
Subsection 1 amended

18.134 Limitation of communications.

The department of general services shall not provide or resell communications services to entities other than state agencies. A political subdivision receiving communications services from the state as of April 1, 1986 may continue to do so but communications services shall not be provided or resold to additional political subdivisions. The rates charged to the political subdivision shall be the same as the rates charged to state agencies.

87 Acts, ch 233, §131 SF 511
Section amended

CHAPTER 19A

DEPARTMENT OF PERSONNEL

19A.3 Applicability—exceptions.

The merit system shall apply to all employees of the state and to all positions in state government now existing or hereafter established except the following:

1. The general assembly, employees of the general assembly, other officers elected by popular vote, and persons appointed to fill vacancies in elective offices.

2. All judicial officers and court employees.

3. The staff of the governor.

4. All board members and commissioners whose appointments are provided for by the Code.

5. All presidents, deans, directors, teachers, professional and scientific personnel, and student employees under the jurisdiction of the state board of regents. The state board of regents shall adopt rules not inconsistent with the objectives of this chapter for all of its employees not cited specifically in this subsection. The rules are subject to approval by the director of the department of personnel. If at any time the director determines that the board of regents merit system does not comply with the intent of this chapter, the director may direct the board to correct the rules. The rules of the board are not in compliance until the corrections are made.

6. All appointments which are by law made by the governor.

7. All personnel of the armed services under state jurisdiction.

8. Part-time persons who are paid a fee on a contract-for-services basis.

9. Seasonal employees appointed during the period of April 15 through October 15.

10. Residents, patients, or inmates working in state institutions, or persons on parole working in work experience programs for a period no longer than one year.

11. Professional employees under the supervision of the attorney general, the appellate defender, the auditor of state, the treasurer of state, and the public

employment relations board. However, employees of the consumer advocate division of the department of justice, other than the consumer advocate, are subject to the merit system.

12. Production and engineering personnel under the jurisdiction of the Iowa public broadcasting board.

13. Members of the Iowa highway safety patrol and other peace officers employed by the department of public safety. The director of public safety shall adopt rules not inconsistent with the objectives of this chapter for the persons described in this subsection.

14. Professional employees of the arts division of the department of cultural affairs.

15. The chief deputy administrative officer and each division head of each executive department not otherwise specifically provided for in this section, and physicians not otherwise specifically provided for in this section. As used in this subsection, "division head" means a principal administrative position designated by a chief administrative officer and approved by the department of personnel or as specified by law.

16. All confidential employees.

17. Other employees specifically exempted by law.

18. The administrator and the deputy administrator of the credit union division of the department of commerce, all members of the credit union review board, and all employees of the credit union division.

19. The superintendent and the deputy superintendent of the banking division of the department of commerce, all members of the state banking board, and all employees of the banking division.

20. The superintendent of savings and loan associations and all employees of the savings and loan division of the department of commerce.

The director of the department of personnel shall negotiate agreements with the administrator of the division for the blind of the department of human rights and with the director of the department of education concerning the applicability of the merit system to the professional employees of their respective agencies.

87 Acts, ch 115, §7 SF 374
Subsection 10 amended

19A.14 Merit appeals—discipline and grievances.

1. *Employee discipline.* A merit system employee, excluding any employee covered under a collective bargaining agreement which provides otherwise, who is discharged, suspended, demoted, or otherwise reduced in pay, except during the employee's probationary period, may appeal to the appointing authority for a review of the action. If not satisfied, the employee may, within thirty calendar days following the date of the discharge, suspension, demotion, or reduction in pay, file an appeal with the public employment relations board for hearing. The employee has the right to a hearing closed to the public, but the employee may request a public hearing. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act. Decisions rendered shall be based upon a standard of just cause. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period or the public employment relations board may fashion other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

2. *Employee grievances.* A merit system employee, excluding any employee covered under a collective bargaining agreement which provides otherwise, who has exhausted all available steps of the uniform grievance procedure of the department of personnel may, within thirty calendar days following the date a decision was received or should have been received by the employee at the second

step of the grievance procedure, file an appeal with the director. The director may grant the relief sought, and that decision constitutes final agency action. However, if the director does not grant the relief sought, the employee may, within thirty calendar days following the date of filing of the appeal, file the appeal with the public employment relations board for hearing. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act. Decisions rendered shall be based upon a standard of substantial compliance with this chapter and the rules of the department of personnel. Decisions by the public employment relations board constitute final agency action.

87 Acts, ch 19, §2 SF 268

Section affirmed and reenacted, effective April 17, 1987; legislative findings; 87 Acts, ch 19, §1, 6 SF 268

19A.19 Prohibited actions.

No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under any provision of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules hereunder.

No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the merit system.

No employee of the department, examiner, or other person shall defeat, deceive, or obstruct any person in the person's right to examination, eligibility certification, or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the merit system.

A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a merit system administered by, or subject to approval of, the director as a reprisal for a disclosure of information by that employee to a member of the general assembly, the legislative service bureau, the legislative fiscal bureau, the citizens' aide, the computer support bureau, or the respective caucus staffs of the general assembly, or a disclosure of information which the employee reasonably believes evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. This subsection does not apply if the disclosure of that information is prohibited by statute.

87 Acts, ch 27, §1 HF 427

Unnumbered paragraph 4 amended

CHAPTER 20

PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

Life and health insurance
for certain retired employees
of the departments of public
safety and natural resources;
87 Acts, ch 232, §6 SF 518

20.1 Public policy.

The general assembly declares that it is the public policy of the state to promote harmonious and co-operative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect

the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.

The general assembly declares that the purposes of the public employment relations board established by this chapter are to implement the provisions of this chapter and adjudicate and conciliate employment-related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include but are not limited to the following:

1. Determining appropriate bargaining units and conducting representation elections.
2. Adjudicating prohibited practice complaints and fashioning appropriate remedial relief for violations of this chapter.
3. Adjudicating and serving as arbitrators regarding state merit system grievances and, upon joint request, grievances arising under collective bargaining agreements between public employers and certified employee organizations.
4. Providing mediators, fact finders, and arbitrators to resolve impasses in negotiations.
5. Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.
6. Assisting the attorney general in the preparation of legal briefs and the presentation of oral arguments in the district court and the supreme court in cases affecting the board.

87 Acts, ch 19, §3 SF 268

Section affirmed and reenacted, effective April 17, 1987; legislative findings; 87 Acts, ch 19, §1,6 SF 268

CHAPTER 22

EXAMINATION OF PUBLIC RECORDS

22.7 Confidential records.

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

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records.
2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a victim of sexual assault or domestic violence and the victim's sexual assault or domestic violence counselor are not subject to disclosure except as provided in section 236A.1.
3. Trade secrets which are recognized and protected as such by law.
4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.
5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.
6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

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

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

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

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

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

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 542 or chapter 543, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

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

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

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

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

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

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

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

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

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

the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

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

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

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

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

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

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

87 Acts, ch 223, §20 HF 661
NEW subsection 24

CHAPTER 25A

STATE TORT CLAIMS ACT

25A.2 Definitions.

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

1. "*State agency*" includes all executive departments, agencies, boards, bureaus, and commissions of the state of Iowa, and corporations whose primary function is to act as, and while acting as, instrumentalities or agencies of the state of Iowa, whether or not authorized to sue and be sued in their own names. This definition does not include any contractor with the state of Iowa. Soil and water conservation districts as defined in section 467A.3, subsection 1, water resource districts as defined in section 467D.2, subsection 1, judicial district departments of correctional services as established in section 905.2, and regional boards of library trustees as defined in chapter 303B, are state agencies for purposes of this chapter.

2. "*State appeal board*" means the state appeal board as defined in section 23.1.

3. "*Employee of the state*" includes any one or more officers, agents, or employees of the state or any state agency, including members of the general

assembly, and persons acting on behalf of the state or any state agency in any official capacity, temporarily or permanently in the service of the state of Iowa, whether with or without compensation but does not include a contractor doing business with the state. Professional personnel, including physicians, osteopathic physicians and surgeons, osteopathic physicians, optometrists and dentists, who render services to patients and inmates of state institutions under the jurisdiction of the department of human services or the Iowa department of corrections are to be considered employees of the state, whether the personnel are employed on a full-time basis or render services on a part-time basis on a fee schedule or other arrangement.

4. "Acting within the scope of the employee's office or employment" means acting in the employee's line of duty as an employee of the state.

5. "Claim" means:

a. Any claim against the state of Iowa for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage, loss, injury, or death.

b. Any claim against an employee of the state for money only, on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the state while acting within the scope of the employee's office or employment.

6. "Award" means any amount determined by the state appeal board to be payable to a claimant under section 25A.3, and the amount of any compromise or settlement under section 25A.9.

87 Acts, ch 23, §1 SF 382
Subsection 1 amended

25A.24 State volunteers.

A person who performs services for the state government or any agency or subdivision of state government and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "compensation" does not include payments to reimburse a person for expenses.

87 Acts, ch 212, §1 SF 471
NEW section

CHAPTER 28

DEVELOPMENT ACTIVITIES

28.27 Loans.

1. The Iowa department of economic development may make a loan to a local development corporation only for the payment of all or part of the amount of interest of a loan made to a local development corporation which is attributable to the cost of construction of a building. The cost of construction does not include the costs of land acquisition, site preparation, railroad extensions, parking, roads, utility extensions or other work which is not the construction of the building.

2. The department may make the loan only for the interest due in the first, second and third years after the completion of the building as determined by the department. The department shall not loan more than twenty thousand dollars in a year for payment of the interest of a loan for the construction of any one

building. The department may agree to loan only those funds which are in the building loan fund or those funds which are scheduled to be paid into the fund under section 28.28 before they are to be loaned under the agreement.

3. To be eligible for the loans, the local development corporation must secure the agreement of the department to make the loan for the first year after completion before commencing construction of the building.

4. Interest shall not be charged on the loans made by the department.

5. The department may attach conditions to the granting of the loan as it deems desirable. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.

87 Acts, ch 17, §3 SF 271

Section affirmed and reenacted, effective April 17, 1987; legislative findings; 87 Acts, ch 17, §1, 12 SF 271

28.101 Primary research and marketing center.

1. The Iowa department of economic development shall establish as soon as practicable a marketing center within the department, to be known as "The Primary Research and Marketing Center for Business and International Trade". The purpose of this center is to provide, in a central location, an inventory of the products and services of Iowa businesses. This information is to provide Iowa businesses with a source for locating and contacting potential buyers of their products and services; to aid in opening new markets for Iowa businesses; and to provide a marketing center for new businesses to utilize within the state. The director of the department is the executive director of the center and shall coordinate activities at the satellite centers. In operating and overseeing the primary research and marketing center for business and international trade, the duties and responsibilities of the department include the following:

a. Cataloging the products and services unique to economic development offered by and purchased by businesses located in the state.

b. Developing a marketing plan to include a listing of target markets within the state, the United States, and international communities for specific products and services already available within the state and products and services which could be made available within the state.

c. Stimulating research in and development and production of new products by state businesses.

d. Marketing management which includes keeping abreast of the changing market demands, developing new approaches to tap potential markets, and financing.

e. Assisting Iowa businesses to enter the international marketplace through the development of export sales strategies and the procurement of export financing, including the use of bartering transactions.

f. Coordinating the satellite centers.

g. Training for and coordination of a computer system to be used by this center and its satellite centers. Wherever practicable the department shall work with educational institutions involved with either the primary research and marketing center for business and international trade or the satellite centers to develop methods and programs that will allow the involvement of students in the development of a computer cataloging system.

h. Coordinating the delivery of programs and services with other state, local, and federal economic development programs and activities including, but not limited to, those available at institutions of higher learning in this state, the United States department of commerce, and other appropriate agencies.

2. To aid in fulfilling the purpose of the primary research and marketing center for business and international trade, the department may provide grants to establish satellite centers throughout the state. To facilitate establishment of satellite centers, the state is divided up into fifteen regional economic delivery areas which have the same area boundaries as merged areas, as defined in section 280A.2, in existence on May 3, 1985. Each regional delivery area wishing to

receive a grant from the department to establish a satellite center in its area shall create a regional coordinating council which shall develop a plan for the area to coordinate all federal, state, and local economic development services within the area. After developing this plan, the council may seek a grant for a satellite center by submitting the coordinating plan and an application for a grant to the department. A grant shall not be awarded within the regional economic delivery area without the approval of the regional coordinating plan by the department. The department may rescind its approval of a regional coordinating plan upon thirty days notice, if the department determines that the stated purpose of the plan is not being carried out. The department may then accept an alternative proposal for a regional coordinating plan. If a regional coordinating council is awarded a grant for a satellite center, it shall employ a center director at the satellite center. The regional coordinating councils shall have sole authority to hire the director of the satellite centers. If, in the opinion of the department, the director of any satellite center is not fulfilling the regional coordinating plan, the department may rescind its approval of the plan. The center director's duties and responsibilities include the following:

- a. Overseeing the center's computer system and computer data input including the entry of the cataloged products and services of businesses located in the area.
- b. Managing the center.
- c. Communicating with the primary research and marketing center for business and international trade.
- d. Coordinating local marketing activities and efforts of local business.
- e. Coordinating delivery of all federal, state, and local economic development programs and services within the area.
- f. Performing other duties and responsibilities assigned to the center by the primary center.

Each satellite center's duties and responsibilities involve conducting primary and secondary research or assisting local colleges, universities, and businesses in developing primary research programs. Primary and secondary research shall be used for analyzing changes in the marketplace, forecasting changes in consumer wants and needs, and possible modifications of products and services to meet the changes.

A regional coordinating council may enter into an agreement under chapter 28E with other regional coordinating councils for the purpose of fostering tourism within their areas. Regional coordinating councils shall be considered public agencies for purposes of chapter 28E.

The regional coordinating council of each regional economic delivery area shall consist of at least six members who shall be selected from state and local government, business, and education which are representative of the region. Beginning with the fiscal year beginning July 1, 1987, only applications from political subdivisions located within regions with an approved regional coordinating plan will be accepted for moneys from the community betterment account established in the Iowa plan fund for economic development in sections 99E.31 through 99E.33. A political subdivision shall submit a copy of the application to the regional coordinating council at the same time as the application is submitted to the department.

CHAPTER 28F

JOINT FINANCING OF PUBLIC WORKS AND FACILITIES

28F.1 Scope of chapter—limitations.

This chapter provides a means for the joint financing by public agencies of works or facilities useful and necessary for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, and industrial waste, facilities used for the conversion of solid waste to energy, and also electric power facilities constructed within the state of Iowa except that hydroelectric power facilities may also be located in the waters and on the dams of or on land adjacent to either side of the Mississippi or Missouri river bordering the state of Iowa, water supply systems, swimming pools or golf courses. This chapter applies to the acquisition, construction, reconstruction, ownership, operation, repair, extension, or improvement of such works or facilities, by a separate administrative or legal entity created pursuant to chapter 28E. When the legal entity created under this chapter is comprised solely of cities, counties, and sanitary districts established under chapter 358, or any combination thereof or any combination of the foregoing with other public agencies, the entity shall be both a corporation and a political subdivision with the name under which it was organized. The legal entity may sue and be sued, contract, acquire and hold real and personal property necessary for corporate purposes, adopt a corporate seal and alter the seal at pleasure, and execute all the powers conferred in this chapter.

A city shall not join an entity created under this chapter for the purpose of financing electric power facilities unless that city had established a municipal electric utility as of July 1, 1984. Power supplied by a municipal power agency shall not be furnished to a municipal utility not existing as of July 1, 1984.

After July 1, 1981, a city shall not join an entity created under this chapter or any separate administrative or legal entity created pursuant to chapter 28E for the purpose of utilizing the provisions of this chapter for financing electric power facilities until the proposal for the city to join such an entity has been submitted to and approved by the voters of the city.

The proposal shall be submitted at any city election by the council on its own motion. If a majority of those voting in the city does not approve the proposal, the same or a similar proposal may be submitted to the voters no sooner than one year from the date of the election at which the proposal was defeated.

87 Acts, ch 225, §402 HF 631
Unnumbered paragraph 1 amended

CHAPTER 29A

MILITARY CODE

29A.43 Discrimination prohibited—leave of absence.

A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state, or hinder or prevent the officer or enlisted person from performing any military service the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary active duty for the purpose of military training or ordered on active state service is entitled to a leave of absence during the period of the duty or service, from the member's private employment, other than employment of a temporary nature, and upon completion of the duty or service the employer shall restore the person to the position held

prior to the leave of absence, or employ the person in a similar position. However, the person shall give evidence to the employer of satisfactory completion of the training or duty, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. A person violating a provision of this section is guilty of a simple misdemeanor.

87 Acts, ch 115, §8 SF 374
Leave for civil employees; §29A.28
Section amended

CHAPTER 38

IOWA PEACE INSTITUTE

38.1 Peace institute.

A corporate body called the "*Iowa Peace Institute*" is created. The institute is an independent nonprofit public instrumentality and the exercise of the powers granted to the institute as a corporation in this chapter is an essential governmental function. As used in this chapter "*institute*" means the "*Iowa Peace Institute*". The purposes of the institute include but are not limited to the following:

1. Provide statewide leadership in promoting the establishment of the United States institute of peace in Iowa.
2. Develop programs that promote peace among nations.
3. Cooperate with the efforts of institutions of higher education in the state in providing courses in the history, culture, religion and language of world communities.
4. Encourage development of courses in the art of negotiation and conflict resolution without the use of violence.
5. Maintain a roster of specialists in world trouble areas to lecture, hold seminars, and participate in designing alternate policy options.
6. Develop alternative strategies for settling international disputes which could be proposed to or contracted for by the United States and other governments.
7. Contract with persons or business organizations to facilitate their engaging in international commerce.

87 Acts, ch 231, §15 SF 515
NEW section

38.2 Governing board.

The institute shall be administered by a governing board which shall consist of not less than fifteen members nor more than twenty-five members as determined by the bylaws of the institute. The bylaws shall also provide for the method of selection of the members, except that seven members shall be appointed as follows:

1. Three members shall be appointed by the governor.
2. One member shall be selected by the majority leader of the senate.
3. One member shall be selected by the minority leader of the senate.
4. One member shall be selected by the speaker of the house of representatives.
5. One member shall be selected by the minority leader of the house of representatives.

Members shall serve a term of four years. Vacancies shall be filled for the unexpired portion of the term.

87 Acts, ch 231, §16 SF 515
NEW section

38.3 Nonprofit corporation.

The institute as a corporation has perpetual succession until the existence of the corporation is terminated by law. If the corporation is terminated, the rights and properties of the corporation shall pass to the state. However, debts and other financial obligations shall not succeed to the state.

87 Acts, ch 231, §17 SF 515
NEW section

38.4 Duties of the board.

The governing board, within the limits of the funds available to it, shall:

1. Employ an executive director to administer the activities of the institute and employ support personnel as necessary.
2. Approve plans relating to the purposes for which the institute is established.
3. Execute contracts with public and private agencies relating to the purposes for which the institute is established.
4. Perform other functions necessary to carry out the purposes of the institute.
5. Establish advisory committees to assist the institute in carrying out its purposes.
6. Provide an annual report to the governor and the general assembly.

87 Acts, ch 231, §18 SF 515
NEW section

38.5 Gifts—grants.

The institute may accept grants, gifts, and bequests, including but not limited to appropriations, federal funds, and other funding available for carrying out the purposes of the institute.

87 Acts, ch 231, §19 SF 515
NEW section

CHAPTER 39

ELECTIONS, ELECTORS, APPOINTMENTS, TERMS AND OFFICERS

39.18 Board of supervisors.

There shall be elected biennially in counties, members of the board of supervisors to succeed those whose terms of office will expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each supervisor shall be four years, except as otherwise provided by section 331.208 or 331.209.

87 Acts, ch 68, §1 HF 47
Section amended

39.21 Nonpartisan offices.

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

1. Regional library trustees as required by section 303B.3.
2. County public hospital trustees as required by section 347.25.
3. Soil and water conservation district commissioners as required by section 467A.5.

87 Acts, ch 23, §2 SF 382
Subsection 3 amended

39.22 Township officers.

The offices of township trustee and township clerk shall be filled by appointment or election as follows:

1. *By appointment.* The county board of supervisors may pass a resolution in favor of filling the offices of trustee and clerk within a township by appointment by the board, and may direct the county commissioner of elections to submit the

question to the eligible voters of the township at the next general election. In a township which does not include a city, eligible voters shall consist of the voters of the entire township. In a township which includes a city, eligible voters are those voters who reside outside the corporate limits of a city. The resolution shall apply to all townships which have not approved a proposition to fill township offices by appointment. If the proposition to fill the township offices by appointment is approved by a majority of the eligible voters, the board shall fill the offices by appointment as the terms of office of the incumbent township officers expire. The election of the trustees and clerk of a township may be restored after approval of the appointment process under this subsection by a resolution of the board of supervisors submitting the question to the eligible voters of the township at the next general election. If the proposition to restore the election process is approved by a majority of the eligible voters, the election of the township officers shall commence with the next primary and general elections. A resolution submitting the question of restoring the election of township officers at the next general election shall be adopted by the board of supervisors upon petition of at least ten percent of the eligible voters of a township. The initial terms of the trustees shall be determined by lot, one for two years, one for three years, and one for four years. However, if a proposition to change the method of selecting township officers is adopted by the electorate, a resolution to change the method shall not be submitted to the electorate for four years.

2. *By election.* If the county board of supervisors does not have the power provided under subsection 1 to fill the offices of trustee and clerk within a township by appointment, then the offices of township trustee and township clerk shall be filled by election. Township trustees and the township clerk, in townships which do not include a city, shall be elected by the voters of the entire township. In townships which include a city, the officers shall be elected by the voters of the township who reside outside the corporate limits of the city, but a township officer may be a resident of the city.

a. *Township trustees.* Township trustees shall be elected biennially to succeed those whose terms of office expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each elected township trustee is four years.

b. *Township clerk.* At the general election held in the year 1990 and every four years thereafter, in each civil township one township clerk shall be elected who shall hold office for the term of four years.

87 Acts, ch 68, §2 HF 47
Section stricken and rewritten

39.23 Township clerk. Repealed by 87 Acts, ch 68, §3. HF 47 See §39.22.

CHAPTER 43

PARTISAN NOMINATIONS—PRIMARY ELECTION

43.26 Ballot—form.

The official primary election ballot shall be prepared, arranged, and printed substantially in the following form:

PRIMARY ELECTION BALLOT

(Name of Party)

of

County of, State of Iowa,Rotation (if any).

Primary election held on the day of June, 19.....

FOR UNITED STATES SENATOR

(Vote for one.)

_____ CANDIDATE'S NAME

_____ CANDIDATE'S NAME

_____

FOR UNITED STATES REPRESENTATIVE

(Vote for one.)

_____ CANDIDATE'S NAME

_____ CANDIDATE'S NAME

_____

FOR GOVERNOR

(Vote for one.)

_____ CANDIDATE'S NAME

_____ CANDIDATE'S NAME

_____

(Followed by other elective state officers in the order in which they appear in section 39.9 and district officers in the order in which they appear in sections 39.15 and 39.16.)

FOR COUNTY AUDITOR

(Vote for one.)

_____ CANDIDATE'S NAME

_____ CANDIDATE'S NAME

_____

(Followed by other elective county officers in the order in which they appear in sections 39.17 and 39.18.)

FOR TOWNSHIP CLERK

(Vote for one.)

_____ CANDIDATE'S NAME

_____ CANDIDATE'S NAME

_____

FOR TOWNSHIP TRUSTEES

(Vote for no more than two.)

- _____ CANDIDATE'S NAME
- _____ CANDIDATE'S NAME
- _____ CANDIDATE'S NAME
- _____

87 Acts, ch 221, §1 HF 600
Section amended

43.45 Counting ballots and returns.

Upon the closing of the polls the precinct election officials shall immediately:

1. Place the ballots of the several political parties in separate piles.
2. Separately count the ballots of each party, and make the correct entries thereof on the tally sheets.
3. Certify to the number of votes cast upon the ticket of each political party for each candidate for each office.
4. Place the ballots cast on behalf of each of the parties in separate envelopes. Seal each envelope and place the signature of all board members of the precinct across the seal of the envelope so that it cannot be opened without breaking the seal.
5. On the outside of each envelope enter the number of ballots cast by each party in the precinct and contained in the envelope.
6. Seal the tally sheets and certificates of the precinct election officials in an envelope on the outside of which are written or printed the names of the several political parties with the names of the candidates for the different offices under their party name, and opposite each candidate's name enter the number of votes cast for such candidate in said precinct.
7. Enter on the envelope the total number of voters of each party who cast ballots in the precinct.
8. Communicate the results of the ballots cast for each candidate for office upon the ticket of each political party, in the manner required by section 50.11, to the commissioner of the county in which said polls are located, who shall remain on duty until the results are communicated to the commissioner from each polling place in the county.

87 Acts, ch 221, §2 HF 600
Subsections 4-7 amended

CHAPTER 44

NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

44.4 Nominations and objections—time and place of filing.

Nominations made under the provisions of this chapter and chapter 45 which are required to be filed in the office of the state commissioner shall be filed in that office not more than eighty-five days nor later than five o'clock p.m. on the sixty-seventh day prior to the date of the general election to be held in November; and those nominations made for a special election called pursuant to section 69.14 shall be filed not less than twenty days prior to the date of an election called upon at least forty days' notice and not less than seven days prior to the date of an election called upon at least ten days' notice. Nominations made pursuant to this chapter and chapter 45 which are required to be filed in the office of the commissioner shall be filed in that office not later than five o'clock p.m. on the fifty-fifth day prior to the date of the general election. Nominations made under this chapter or chapter 45 for city office shall be filed not more than sixty-five days nor later than five o'clock p.m. on the fortieth day prior to the city election with the city clerk, who shall process them as provided by law.

Objection to the legal sufficiency of a certificate of nomination or to the eligibility of a candidate may be filed by any person who would have the right to vote for a candidate for the office in question. Such objections must be filed with the officer with whom such certificate is filed and within the following time:

1. Those filed with the state commissioner, not less than sixty days before the day of election.
2. Those filed with the commissioner, not less than fifty days before the day of election.
3. Those filed with the city clerk, at least forty-two days prior to the municipal election.
4. In case of nominations to fill vacancies occurring after the time when an original nomination for any office is required to be filed, objections shall be filed within three days after the filing of the certificate.

87 Acts, ch 221, §3 HF 600
Subsection 3 amended

44.9 Withdrawals.

Any candidate named under this chapter may withdraw the candidate's nomination by a written request, signed and acknowledged by that person before any officer empowered to take acknowledgment of deeds. Such withdrawal must be filed as follows:

1. In the office of the state commissioner, at least sixty days before the day of election.
2. In the office of the proper commissioner, at least fifty days before the day of the election.
3. In the office of the proper school board secretary, at least thirty-five days before the day of a regularly scheduled school election.
4. In the office of the state commissioner, in case of a special election to fill vacancies in Congress or the general assembly, not more than:
 - a. Twenty days after the date on which the governor issues the call for a special election to be held on at least forty days' notice.
 - b. Five days after the date on which the governor issues the call for a special election to be held on at least ten but less than forty days' notice.
5. In the office of the proper commissioner, school board secretary or city clerk, in case of a special election to fill vacancies, at least twenty-five days before the day of election.
6. In the office of the proper city clerk, at least forty-two days before the regularly scheduled city election.

87 Acts, ch 221, §4.5 HF 600
Subsection 3 amended
NEW subsection 6

CHAPTER 45

NOMINATIONS BY PETITION

45.3 Preparation of petition and affidavit.

Each eligible elector who signs a nominating petition drawn up in accordance with this chapter shall add to the signature the elector's residence address and the date of signing. The person whose nomination is proposed by the petition may not sign it. Before the petition is filed, there shall be endorsed upon or attached to it an affidavit executed by that candidate, in substantially the following form:

"I,, being duly sworn, say that I reside at
.....street, city of, county of, in
the state of Iowa; that I am a candidate for election to the office of
....., at the election to be held on, and
hereby request that my name be printed upon the official ballot for that election

as provided by law. I furthermore declare that I am eligible to the office for which I am a candidate and that if I am elected I will qualify as such officer.

.....
(Signed)

Subscribed and sworn to (or affirmed) before me byon this..... day of, 19.....

.....
(Name)

.....
(Official title)"

The affidavit required to be filed under the provisions of this section shall include a statement in substantially the following form:

I am aware that I am required to organize a candidate's committee which shall file an organization statement and disclosure reports if it receives contributions, makes expenditures, or incurs indebtedness in excess of two hundred fifty dollars for the purpose of supporting my candidacy for public office.

87 Acts, ch 221, §6 HF 600
Subsection 1 stricken and subsection 2 incorporated into first paragraph

CHAPTER 46

NOMINATION AND ELECTION OF JUDGES

46.1 Appointment of state judicial nominating commissioners.

The governor shall appoint, subject to confirmation by the senate, one eligible elector of each congressional district to the state judicial nominating commission for a six-year term beginning and ending as provided in section 69.19. The terms of no more than three nor less than two of the members shall expire within the same two-year period. No more than a simple majority of the members appointed shall be of the same gender.

87 Acts, ch 218, §1 SF 148
No member appointed before July 1, 1987, shall be removed solely to meet gender requirements; 87 Acts, ch 218, §9 SF 148
Section amended

46.2 Election of state judicial nominating commissioners.

The resident members of the bar of each congressional district shall elect one eligible elector of the district to the state judicial nominating commission for a six-year term beginning July 1. The terms of no more than three nor less than two of the members shall expire within the same two-year period, the expiration dates being governed by the expiration dates of the terms of the original appointive members. The members of the bar of the respective congressional districts shall in January, immediately preceding the expiration of the term of a member of the commission, elect a successor for a like term. For the first elective term open on or after July 1, 1987, in the odd-numbered districts the elected member shall be a woman and in the even-numbered districts the elected member shall be a man. Thereafter, the districts shall alternate between women and men elected members.

87 Acts, ch 218, §2 SF 148
Section amended

46.3 Appointment of district judicial nominating commissioners.

The governor shall appoint five eligible electors of each judicial election district to the district judicial nominating commission. Appointments shall be to staggered terms of six years each and shall be made in the month of January for terms

commencing February 1 of even-numbered years. No more than a simple majority of the commissioners appointed shall be of the same gender.

87 Acts, ch 218, §3 SF 148

No member appointed before July 1, 1987, shall be removed solely for purposes of meeting gender requirements; 87 Acts, ch 218, §9 SF 148

Section amended

46.4 Election of district judicial nominating commissioners.

The resident members of the bar of each judicial election district shall elect five eligible electors of the district to the district judicial nominating commission. Commissioners shall be elected to staggered terms of six years each. The elections shall be held in the month of January for terms commencing February 1 of even-numbered years.

For terms commencing February 1, 1988, and every six years thereafter, one elected commissioner in each district shall be a woman and one shall be a man. For terms commencing February 1, 1990, and every six years thereafter, one elected commissioner in each district shall be a woman and one shall be a man. For the term commencing February 1, 1992, in the odd-numbered districts the elected commissioner shall be a woman and in the even-numbered districts the elected commissioner shall be a man. For the terms commencing every six years thereafter, the districts shall alternate between women and men elected commissioners.

87 Acts, ch 218, §4 SF 148

Section amended

46.5 Vacancies.

When a vacancy occurs in the office of appointive judicial nominating commissioner, the chairperson of the particular commission shall promptly notify the governor in writing of such fact. Vacancies in the office of appointive judicial nominating commissioner shall be filled by appointment by the governor, consistent with eligibility requirements. The term of state judicial nominating commissioners so appointed shall commence upon their appointment pending confirmation by the senate at the then session of the general assembly or at its next session if it is not then in session. The term of district judicial nominating commissioners so appointed shall commence upon their appointment.

Except where the term has less than ninety days remaining, vacancies in the office of elective member of the state judicial nominating commission shall be filled consistent with eligibility requirements by a special election within the congressional district where the vacancy occurs, such election to be conducted as provided in sections 46.9 and 46.10.

Vacancies in the office of elective judicial nominating commissioner of district judicial nominating commissions shall be filled consistent with eligibility requirements and by majority vote of the authorized number of elective members of the particular commission, at a meeting of such members called in the manner provided in section 46.13. The term of judicial nominating commissioners so chosen shall commence upon their selection.

If a vacancy occurs in the office of chairperson of a judicial nominating commission, or in the absence of the chairperson, the members of the particular commission shall elect a temporary chairperson from their own number.

When a vacancy in an office of an elective judicial nominating commissioner occurs, the clerk of the supreme court shall cause to be mailed to each member of the bar whose name appears on the certified list prepared pursuant to section 46.8 for the district or districts affected, a notice stating the existence of the vacancy, the requirements for eligibility, and the manner in which the vacancy will be filled. Other items may be included in the same mailing if they are on sheets separate from the notice. The election of a district judicial nominating commis-

sioner or the close of nominations for a state judicial nominating commissioner shall not occur until thirty days after the mailing of the notice.

87 Acts, ch 218, §5 SF 148
Section amended

46.9A Notice preceding nomination of elective nominating commissioners.

At least sixty days prior to the expiration of the term of an elective state or district judicial nominating commissioner, the clerk of the supreme court shall cause to be mailed to each member of the bar whose name appears on the certified list prepared pursuant to section 46.8 for the district or districts affected, a notice stating the date the term of office will expire, the requirements for eligibility to the office for the succeeding term, and the procedure for filing nominating petitions, including the last date for filing. Other items may be included in the same mailing if they are on sheets separate from the notice.

87 Acts, ch 218, §6 SF 148
NEW section

CHAPTER 48

PERMANENT REGISTRATION

48.5 Registration records.

1. The county commissioner of registration shall maintain the registration records of all qualified electors in the county in accordance with rules promulgated by the registration commission. Registration records shall not be removed from that office or other designated locations except upon court order, and shall be open to inspection by the public at reasonable times.

2. Any person may request of the registrar and shall receive, upon payment of the cost of preparation, a list of qualified electors and other data on registration and participation in elections, in accordance with the following requirements and limitations:

a. Each list shall be produced in the order and form specified by the requester, so long as that order and form are within the capacity of the record maintenance system used by the registrar; however, the available residential telephone number provided by the registrant shall be included if requested.

b. Each list shall reflect all additions, changes and deletions made prior to the fifth day before the list was prepared.

c. The registrar shall not be required to provide lists or data during the fifteen days prior to the date of the primary election, the general election, the regular city election held pursuant to section 376.1, or the annual school election in any order or form other than that utilized to conduct the election, if the preparation of a list in any other order or form requested would impede the preparation of the election registers for that election.

d. A periodic updating of the registration lists showing all additions, changes and deletions since the previous updating shall be provided at least once each fourteen days except during the two weeks prior to the close of registration before any election, when it shall be provided daily if requested. Each requester under this paragraph shall receive the updating data at the same time, which shall be determined by the registrar, but in an order and form specified by the requester. Each requester shall pay the cost of duplicating the updating data before receiving a copy thereof.

e. The requester shall be able to determine who voted by absentee ballot within each of the two preceding primary elections or each of the two preceding general elections.

3. The duplicate registration records open to public inspection and any list obtained under subsection 2 shall be used only to request a registrant's vote or for any other bona fide political purpose or for a bona fide official purpose by an elected official. The commissioner or registrar shall keep a list of the name, address, telephone number, and social security number of each person who copies or obtains copies of the registration lists. Any person that uses such lists in violation of this section shall, upon conviction, be guilty of a serious misdemeanor.

4. Beginning not later than January 1, 1977, every voter registration record shall be maintained in computer readable form according to the specifications of the registrar.

5. After each general and primary election the county commissioner of registration shall update the telephone numbers of qualified electors in the registration records using the telephone numbers provided in the declaration of eligibility under section 49.77.

87 Acts, ch 221, § 7, 8 HF 600
 Subsection 2, NEW paragraph e
 NEW subsection 5

48.7 Notice of change of name, address or telephone number.

1. A qualified elector may record a legal change of name or a change of telephone number or address, for voter registration purposes, by one of the following methods:

a. The qualified elector may submit to the commissioner a written notice of the change of name, telephone number, or address, bearing the elector's signature. Upon receipt of the notice, the commissioner shall change the registration records accordingly and the change shall be reflected in the election registers prepared for the next election held ten or more days after receipt of the qualified elector's notice. If the notice received by the commissioner does not contain the information regarding name and address necessary to properly update the registration records, the commissioner shall immediately send notice to the elector, by forwardable mail directed to the elector's last known address, that the elector's registration is defective. The commissioner's notice shall advise the elector of the corrections necessary.

b. A qualified elector of any precinct in the county of the elector's current residence may record a change of name, telephone number, or address on election day at the polling place for the precinct in which the elector currently resides. If the qualified elector is submitting a change of name, telephone number, or address from within the precinct, the precinct election officials shall furnish the qualified elector a registration form of the type prescribed for use by electors registering under section 48.3. The elector shall complete the form and submit it to the precinct election officials, who shall return it to the commissioner with the election supplies. If the qualified elector is submitting a change of address from another precinct within the county, the qualified elector may vote in the ordinary manner if the precinct election officials have verified the qualified elector's registration in the county by communicating with the commissioner's office or by reviewing a county registration list provided by the commissioner. The commissioner may provide county registration lists to some or all the precincts in the county. If the qualified elector's registration in the county is not verified by a precinct election official, the elector shall cast a special ballot as provided in section 49.81. If the name, telephone number, or address provided by the qualified elector on the special ballot envelope is different from the information on the elector's last previous registration, the commissioner shall change the registration records accordingly.

If the qualified elector's name or former name appears on the election register in the polling place for the election being held that day, the elector may record a change of name, telephone number, or address and cast a ballot in the usual manner if the qualified elector currently resides in that precinct. If the qualified

elector's former address and new address are in different counties, the registration form completed by the qualified elector shall be forwarded to the commissioner of the elector's current county of residence by the commissioner conducting the election.

If a change of name, telephone number, or address is submitted under this subsection, the commissioner shall not change the party affiliation in the elector's prior registration other than that indicated by the elector.

2. The commissioner shall record a change of address for a qualified elector, without the necessity of action by the elector, in any of the following circumstances in which the elector's mailing address is changed but the elector's place of residence has not actually changed:

a. Annexation of territory to a city. When a city annexes territory, the city clerk shall furnish the commissioner a detailed map of the annexed territory. The commissioner shall change the registration of persons residing in that territory to reflect the annexation and the city precinct to which each of those persons is assigned. If the commissioner cannot determine the names and addresses of the persons affected by the annexation, the commissioner shall send each person who may be involved a letter informing that person that the person's registration may be in error, and requesting that each person provide the commissioner the information necessary to correct the registration records.

b. Change of official street name or house or building number by a city. When the city changes the name of a street or the number of a house or other building in which an individual resides, the city clerk shall inform the commissioner of the change, and the commissioner shall change the registration of each person affected.

c. Change of rural route designation of the residence of a qualified elector. The commissioner shall request each postmaster in the county to inform the commissioner of each change of rural route designation and the names of the persons affected, and shall change the registration of each such person as appropriate.

87 Acts, ch 221, §9, 10 HF 600
 Subsection 1, paragraph b amended
 Subsection 1, NEW unnumbered paragraph at end

48.20 Registration in state offices.

The registration forms provided in section 48.3 shall be available in the offices maintained by the state agencies listed in this section. The officers and employees of those agencies shall offer to each person doing business in that office the opportunity to register, unless the officer or employee is reasonably certain that a person doing business in the office has already been offered a registration form within the previous twelve-month period. If the person does execute the form, the form shall be sent to the appropriate commissioner of registration. This section applies to the Iowa civil rights commission and the state departments of human services, human rights, cultural affairs, employment services, revenue and finance, personnel, agriculture and land stewardship, and transportation, and the offices of the clerks of court of the district courts. This section does not prevent the officers or employees of any other state agency from offering voter registration forms to persons in those offices.

87 Acts, ch 221, §11 HF 600
 NEW section

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

49.12 Election boards.

There shall be appointed in each election precinct an election board which shall ordinarily consist of five precinct election officials. However, in precincts using

only one voting machine at any one time, and in precincts voting by paper ballot where no more than three hundred fifty persons cast ballots in the last preceding similar election, the board shall consist of three precinct election officials; and in precincts using more than two voting machines one additional precinct election official may be appointed for each such additional machine. At the commissioner's discretion, additional precinct election officials may be appointed to work at any election. Double election boards may be appointed for any precinct as provided by chapter 51. Not more than a simple majority of the members of the election board in any precinct, or of the two combined boards in any precinct for which a double election board is appointed, shall be members of the same political party or organization if one or more qualified electors of another party or organization are qualified and willing to serve on the board.

If double counting boards are not appointed for precincts using paper ballots and using only three precinct election officials a fourth precinct election official shall be appointed from the election board panel to serve beginning at 8:00 p.m. to assist in counting the paper ballots.

87 Acts, ch 221, §12 HF 600
Unnumbered paragraph 1 amended

49.31 Arrangement of names on ballot.

1. All nominations of any political party or group of petitioners, except as provided in section 49.30, shall be placed under the party name or title of such party or group, as designated by them in their certificates of nomination or petitions, or if none be designated, then under some suitable title, and the ballot shall contain no other names, except as provided in section 49.32.

2. The commissioner shall prepare a list of the election precincts of the county, by arranging the various townships and cities in the county in alphabetical order, and the wards or precincts in each city or township in numerical order under the name of such city or township. The commissioner shall then arrange the surnames of each political party's candidates for each office to which two or more persons are to be elected at large alphabetically for the respective offices for the first precinct on the list; thereafter, for each political party and for each succeeding precinct, the names appearing first for the respective offices in the last preceding precinct shall be placed last, so that the names that were second before the change shall be first after the change. The commissioner may also rotate the names of candidates of a political party in the reverse order of that provided in this subsection or alternate the rotation so that the candidates of different parties shall not be paired as they proceed through the rotation. The procedure for arrangement of names on ballots provided in this section shall likewise be substantially followed in elections in political subdivisions of less than a county.

3. The ballots for any city elections, school elections, special election, or any other election at which any office is to be filled on a nonpartisan basis and the statutes governing the office to be filled are silent as to the arrangement of names on the ballot, shall contain the names of all nominees or candidates arranged in alphabetical order by surname under the heading of the office to be filled. When a city election, school election, special election, or any other election at which an office is to be filled on a nonpartisan basis, is held in more than one precinct, the candidates' names shall be rotated on the ballot from precinct to precinct in the manner prescribed by subsection 2 unless there are no more candidates for an office than the number of persons to be elected to that office.

4. If electors in any precinct are entitled to vote for more than one nominee or candidate for a particular office, the heading for that office on the precinct ballot shall be immediately followed by a notation of the maximum number of nominees or candidates for that office for whom each elector may vote. Provision shall be

made on the ballot to allow the elector to write in the name of any person for whom the elector desires to vote for any office or nomination on the ballot.

87 Acts, ch 221, §13, 14 HF 600
Subsections 3 and 4 amended

49.53 Publication of ballot and notice.

The commissioner shall not less than four nor more than twenty days prior to the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters appearing on the published sample ballot to be less than five thirty-sixths of an inch high in candidates' names or in summaries of public measures. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall be published in at least one newspaper, as defined in section 618.3, which is published in the county or other political subdivision in which the election is to occur or, if no newspaper is published there, in at least one newspaper of substantial circulation in the county or political subdivision. For the general election or the primary election the foregoing notice shall be published in at least two newspapers published in the county. However, if there is only one newspaper published in the county, publication in one newspaper shall be sufficient.

87 Acts, ch 221, §15 HF 600
Section amended

49.77 Ballot furnished to voter.

1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:

VOTER'S DECLARATION OF ELIGIBILITY

I do solemnly swear or affirm that I am a resident of theprecinct,ward or township, city of, county of, Iowa.

I am a qualified elector. I have not voted and will not vote in any other precinct in said election.

(For primary election only:) I am affiliated with theparty.

I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

.....
Signature of Voter

.....
Address

.....
Telephone

Approved:

.....
Board Member

2. One of the precinct election officials shall announce the elector's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3 or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials.

3. A precinct election official may require of an elector unknown to the official, identification upon which the elector's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

4. A person whose name does not appear on the election register of the precinct in which that person claims the right to vote shall not be permitted to vote unless the commissioner informs the precinct election officials that an error has occurred and that the person is a qualified elector of that precinct. If the commissioner finds no record of the person's registration but the person insists that the person is a qualified elector of that precinct, the precinct election officials shall allow the person to cast a ballot in the manner prescribed by section 49.81.

5. The request for the telephone number in the declaration of eligibility in subsection 1 is not mandatory and the failure by the elector to provide the telephone number does not affect the declaration's validity.

87 Acts, ch 221, §16, 17 HF 600
Subsection 1 amended
NEW subsection 5

49.81 Procedure for challenged voter to cast ballot.

1. A prospective voter who is prohibited under section 49.77, subsection 4, or 49.80 from voting except under this section shall be permitted to cast a paper ballot. If a booth meeting the requirement of section 49.25 is not available at that polling place, the precinct election officials shall make alternative arrangements to insure the challenged voter the opportunity to vote in secret. The marked ballot, folded as required by section 49.84, shall be delivered to a precinct election official who shall immediately seal it in an envelope of the type prescribed by subsection 4. The sealed envelope shall be deposited in a special envelope marked "ballots for special precinct" and shall be considered as having been cast in the special precinct established by section 53.20 for purposes of the postelection canvass.

2. Each person who casts a special ballot under this section shall receive a printed statement in substantially the following form:

Your qualifications as an elector have been challenged for the following reasons:

- 1.
- 2.
- 3.

Your right to vote will be reviewed by the special precinct counting board onYou have the right and are encouraged to make a written statement and submit additional written evidence to this board supporting your qualifications as an elector. This written statement and evidence may be given to an election official of this precinct on election day or mailed or delivered to the county commissioner of elections, but must be received prior to noon onatIf your ballot is not counted you will receive notification of this fact.

3. Any elector may present written statements or documents, supporting or opposing the counting of any special ballot, to the precinct election officials on election day, until the hour for closing the polls. Any statements or documents so presented shall be delivered to the commissioner when the election supplies are returned.

4. The individual envelopes used for each paper ballot cast pursuant to subsection 1 shall have printed on them the format of the face of the registration form under section 48.3 and the following:

I believe I am a qualified elector of this precinct. I registered to vote incounty on or about atMy name at that time wasI have not moved to a different county since that time. I am a United States citizen, at least eighteen years of age.

.....
(signature of elector) (date)

The following information is to be provided by the precinct election official:
Reason for challenge:

.....
.....
.....
(signature of precinct election official)

87 Acts, ch 221, §19, 20 HF 600
Subsections 2 and 3 amended
Subsection 4 stricken and rewritten

CHAPTER 50

CANVASS OF VOTES

50.12 Return and preservation of ballots.

Immediately after making such proclamation, and before separating, the board members of each precinct in which votes have been received by paper ballot shall enclose in an envelope or other container all ballots which have been counted by them, except those endorsed "Rejected as double", "Defective", or "Objected to", and securely seal such envelope. The signatures of all board members of the precinct shall be placed across the seal or the opening of the container so that it cannot be opened without breaking the seal. The precinct election officials shall return all the ballots to the commissioner, who shall carefully preserve them for six months.

87 Acts, ch 221, §21 HF 600
Section amended

50.20 Notice of number of special ballots.

The commissioner shall compile a list of the number of special ballots cast under section 49.81 in each precinct. The list shall be made available to the public as soon as possible, but in no case later than nine o'clock a.m. on the second day following the election. Any elector may examine the list during normal office hours, and may also examine the affidavit envelopes bearing the ballots of challenged electors until the reconvening of the special precinct board as required by this chapter. Only those persons so permitted by section 53.23, subsection 4, shall have access to the affidavits while that board is in session. Any elector may present written statements or documents, supporting or opposing the counting of any special ballot, at the commissioner's office until the reconvening of the special precinct board.

87 Acts, ch 221, §22 HF 600
Section amended

50.21 Special precinct board reconvened.

The commissioner shall reconvene the election board of the special precinct established by section 53.20 not earlier than noon on the second day following each election which is required by law to be canvassed on the Monday following the election. If the second day following such an election is a legal holiday the special precinct election board may be convened at noon on the day following the election, and if the canvass of the election is required at any time earlier than the Monday following the election, the special precinct election board shall be reconvened at noon on the day following the election.

If no special ballots were cast in the county pursuant to section 49.81 at any election, the special precinct election board need not be so reconvened. If the number of special ballots so cast at any election is not sufficient to require reconvening of the entire election board of the special precinct, the commissioner may reconvene only the number of members required. If the number of special ballots cast at any election exceeds the number of absentee ballots cast, the size of the special precinct election board may be increased at the commissioner's discretion. The commissioner shall observe the requirements of sections 49.12 and 49.13 in making adjustments to the size of the special precinct election board.

87 Acts, ch 221, §23 HF 600
Section amended

50.22 Special precinct board to determine challenges.

Upon being reconvened, the special precinct election board shall review the information upon the envelopes bearing the special ballots, and all evidence submitted in support of or opposition to the right of each challenged person to vote in the election. The board may divide itself into panels of not less than three members each in order to hear and determine two or more challenges simultaneously, but each panel shall meet the requirements of section 49.12 as regards political party affiliation of the members of each panel. The decision to count or reject each ballot shall be made upon the basis of the information given on the envelope containing the special ballot, the evidence concerning the challenge, the registration and the returned receipts of registration. If a special ballot is rejected, the person casting the ballot shall be notified by the commissioner within ten days of the reason for the rejection, on the form prescribed by the state commissioner pursuant to section 53.25, and the envelope containing the special ballot shall be preserved unopened and disposed of in the same manner as spoiled ballots. The special ballots which are accepted shall be counted in the manner prescribed by section 53.24. The commissioner shall make public the number of special ballots rejected and not counted, at the time of the canvass of the election.

87 Acts, ch 221, §24 HF 600
Section amended

50.29 Certificate of election.

When any person is thus declared elected, there shall be delivered to that person a certificate of election, under the official seal of the county, in substance as follows:

STATE OF IOWA
..... County.

At an election held in said county on theday of, A.D.A
.....Bwas elected to the office of for the term of
.....years from theday ofA.D.(or if elected to fill a vacancy,
for the residue of the term ending on theday of, A.D.), and
until a successor is elected and qualified.

C D,
President of Board of Canvassers.
Witness, E F,
County Commissioner of Elections
(clerk).

Such certificate is presumptive evidence of the person's election and qualification.

87 Acts, ch 115, §9 SF 374
Section amended

50.41 Certificate of election.

Each person declared elected by the state board of canvassers shall receive a certificate, signed by the governor, or, in the governor's absence, by the secretary of state, with the seal of state affixed, attested by the other canvassers, to be in substance as follows:

STATE OF IOWA:

To A B It is hereby certified that, at an election held on the day of you were elected to the office ofof Iowa, for the term of years, from the day of(or if to fill a vacancy, for the residue of the term, ending on the day of).

Given at the seat of government this day of.....

If the governor is absent, the certificate of the election of the secretary of state shall be signed by the auditor. The certificate to members of the legislature shall describe, by the number, the district from which the member is elected.

87 Acts, ch 115, §10 SF 374
Section amended

CHAPTER 53

ABSENT VOTERS LAW

53.2 Application for ballot.

Any qualified elector, under the circumstances specified in section 53.1, may on any day, except election day, and not more than seventy days prior to the date of the election, make written application to the commissioner for an absentee ballot. The state commissioner shall prescribe a form for absentee ballot applications. However, if an elector submits an application that includes all of the information required in this section, the prescribed form is not required.

This section does not require that a written communication mailed to the commissioner’s office to request an absentee ballot, or any other document be notarized as a prerequisite to receiving or marking an absentee ballot or returning to the commissioner an absentee ballot which has been voted.

Each application shall contain the name and signature of the qualified elector, the address at which the elector is qualified to vote, and the name or date of the election for which the absentee ballot is requested, and such other information as may be necessary to determine the correct absentee ballot for the qualified elector. If insufficient information has been provided, the commissioner shall, by the best means available, obtain the additional necessary information.

If the application is for a primary election ballot and the request is for a ballot of a party different from that recorded on the qualified elector’s voter registration record, the requested ballot shall be mailed or given to the applicant together with a “Change or Declaration of Party Affiliation” form as prescribed in section 43.42, to be completed by the qualified elector at the time of voting. Upon receipt of the properly completed form, the commissioner shall approve the change or declaration and enter a notation of the change on the registration records.

If an application for an absentee ballot is received from an eligible elector who is not a qualified elector the commissioner shall send a registration form under section 48.3 and an absentee ballot to the eligible elector. If the application is received so late that it is unlikely that the registration form can be returned in time to be effective on election day, the commissioner shall enclose with the absentee ballot a notice to that effect, informing the voter of the registration time limits in sections 48.3 and 48.11. The commissioner shall record on the elector’s application that the elector is not currently registered to vote. If the registration form is properly returned by the time provided by section 48.3, the commissioner shall record on the elector’s application the date of receipt of the registration form and enter a notation of the registration on the registration records.

A qualified elector who has not moved from the county in which the elector is registered to vote may submit a change of name, telephone number, or address on

the form prescribed in section 48.3 when casting an absentee ballot. Upon receipt of a properly completed form, the commissioner shall enter a notation of the change on the registration records.

87 Acts, ch 221, §25 HF 600
Section amended

53.3 Special absentee ballot. Repealed by 87 Acts, ch 221, §36. HF 600 See §53.45.

53.17 Mailing or delivering ballot.

The sealed envelope containing the absentee ballot shall be enclosed in a carrier envelope which shall be securely sealed. The sealed carrier envelope shall be returned to the commissioner by one of the following methods:

1. The sealed carrier envelope may be delivered by the qualified elector or the elector's designee to the commissioner's office no later than the time the polls are closed on election day.

2. The sealed carrier envelope may be mailed to the commissioner. The carrier envelope shall indicate that greater postage than ordinary first class mail may be required. The commissioner shall pay any insufficient postage due on a carrier envelope bearing ordinary first class postage and accept the ballot. In order for the ballot to be counted, the carrier envelope must be clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner not later than the time established for the canvass by the board of supervisors for that election. The commissioner shall contact the post office serving the commissioner's office at the latest practicable hour prior to the canvass by the board of supervisors for that election, and shall arrange for absentee ballots received in that post office but not yet delivered to the commissioner's office to be brought to the commissioner's office prior to the canvass for that election by the board of supervisors.

87 Acts, ch 221, §26 HF 600
Subsection 2 amended

53.22 Balloting by confined persons.

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

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

c. The special precinct election officers shall travel together in the same vehicle and both shall be present when an applicant casts an absentee ballot. If either or both of the special precinct election officers fail to appear at the time the

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

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

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

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

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

87 Acts, ch 221, §27, 28 HF 600
 Subsection 2 amended
 NEW subsections 4 and 5

53.40 Request requirements—transmission of ballot.

Request in writing for a ballot for the primary election and for the general election may be made by any member of the armed forces of the United States who is or will be a qualified voter on the day of the election at which the ballot is to be cast, at any time prior to either of the elections. Unless the request specifies otherwise, a request for the primary election shall also be considered a request for the general election. In the case of the general election request may be made not more than seventy days before the election, for and on behalf of a voter in the armed forces of the United States by a spouse, parent, parent-in-law, adult brother,

adult sister, or adult child of the voter, residing in the county of the voter's residence. However, a request made by other than the voter may be required to be made on forms prescribed by the state commissioner.

A request shall show the residence (including street address, if any) of the voter, the age of the voter, and length of residence in the city or township, county and state, and shall designate the address to which the ballot is to be sent, and in the case of the primary election, the party affiliation of such voter. Such request shall be made to the commissioner of the county of the voter's residence, provided that if the request is made by the voter to any elective state, city or county official, the said official shall forward it to the commissioner of the county of the voter's residence, and such request so forwarded shall have the same force and effect as if made direct to the commissioner by the voter.

The commissioner shall immediately on the fortieth day prior to the particular election transmit ballots to the voter by mail or otherwise, postage prepaid, as directed by the state commissioner, requests for which are in the commissioner's hands at that time, and thereafter so transmit ballots immediately upon receipt of requests. A request for ballot for the primary election which does not state the party affiliation of the voter making the request is void and of no effect. A request which does not show that the person for whom a ballot is requested will be a qualified voter in the precinct in which the ballot is to be cast on the day of the election for which the ballot is requested, shall not be honored. However, a request which states the age and the city, including street address, if any, or township, and county where the voter resides, and which shows a sufficient period of residence, is sufficient to show that the person is a qualified voter. A request by the voter containing substantially the information required is sufficient.

If the affidavit on the ballot envelope shows that the affiant is not a qualified voter on the day of the election at which said ballot is offered for voting, the envelope shall not be opened, but the envelope and ballot contained therein shall be preserved and returned by the precinct election officials to the commissioner, who shall preserve same for the period of time and under the conditions provided for in sections 50.12 to 50.15.

87 Acts, ch 221, §18 HF 600
Unnumbered paragraph 1 amended

53.45 Special absentee ballot.

1. As provided in this section, the commissioner shall provide special absentee ballots to be used for state general elections. A special absentee ballot shall only be provided to a qualified elector who completes an application stating both of the following to the best of the qualified elector's belief:

a. The qualified elector will be residing or stationed or working outside the continental United States.

b. The qualified elector will be unable to vote and return a regular absentee ballot by normal mail delivery within the period provided for regular absentee ballots.

The application for a special absentee ballot shall not be filed earlier than ninety days prior to the general election. The special absentee ballot shall list the offices and measures, if known, scheduled to appear on the general election ballot. The qualified elector may use the special absentee ballot to write in the name of any eligible candidate for each office and may vote on any measure.

2. With any special absentee ballot issued under this section, the commissioner shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that general election and a list of any measures that have been referred to the ballot before the time of the application.

3. Write-in votes on special absentee ballots shall be counted in the same manner provided by law for the counting of other write-in votes. The commis-

sioner shall process and canvass the special absentee ballots provided under this section in the same manner as other absentee ballots.

4. Notwithstanding the provisions of section 53.49, a qualified elector who requests a special absentee ballot under this section may also make application for an absentee ballot under section 53.2 or an armed forces absentee ballot under section 53.40. If the regular absentee or armed forces absentee ballot is properly voted and returned, the special absentee ballot is void and the commissioner shall reject it in whole when special absentee ballots are canvassed.

87 Acts, ch 221, §29 HF 600
NEW section

53.49 Applicable to armed forces and other citizens.

The provisions of this division as to absent voting shall apply only to absent voters in the armed forces of the United States as defined for the purpose of absentee voting in section 53.37. The provisions of sections 53.1 to 53.36, shall apply to all other qualified voters not members of the armed forces of the United States.

87 Acts, ch 221, §30 HF 600
Unnumbered paragraph 2 stricken

CHAPTER 56

CAMPAIGN FINANCE DISCLOSURE

56.2 Definitions.

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

1. "*Candidate*" means any individual who has taken affirmative action to seek nomination or election to a public office but shall exclude any judge standing for retention in a judicial election.

2. "*Public office*" means any federal, state, county, city, or school office filled by election.

3. "*County office*" includes the office of drainage district trustee.

4. "*Contribution*" means:

a. A gift, loan, advance, deposit, rebate, refund, or transfer of money or a gift in kind.

b. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee for any such purpose.

"*Contribution*" shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate's committee or political committee or a state or county statutory political committee except when organized or provided on a collective basis by a business, trade association, labor union, or any other organized group or association. "*Contribution*" shall not include refreshments served at a campaign function so long as such refreshments do not exceed fifty dollars in value or transportation provided to a candidate so long as its value computed at a rate of twenty cents per mile does not exceed one hundred dollars in value in any one reporting period. "*Contribution*" shall not include something provided to a candidate for the candidate's personal consumption or use and not intended for or on behalf of the candidate's committee.

5. "*Person*" means, without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

6. "*Political committee*" means a committee, but not a candidate's committee, which accepts contributions, makes expenditures, or incurs indebtedness in the aggregate of more than two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue, or

an association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization which makes contributions in the aggregate of more than two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or a ballot issue. "*Political committee*" also includes a committee which accepts contributions, makes expenditures, or incurs indebtedness in the aggregate of more than two hundred fifty dollars in a calendar year to cause the publication or broadcasting of material in which the public policy positions or voting record of an identifiable candidate is discussed and in which a reasonable person could find commentary favorable or unfavorable to those public policy positions or voting record.

7. "*State statutory political committee*" means a committee as defined in section 43.111.

8. "*County statutory political committee*" means a committee as defined in section 43.100.

9. "*Campaign function*" means any meeting related to a candidate's campaign for election.

10. "*Commission*" means the campaign finance disclosure commission created under section 56.9.

11. "*State income tax liability*" means the state individual income tax imposed under section 422.5 reduced by the sum of the deductions from the computed tax as provided under section 422.12.

12. "*Fund-raising event*" means any campaign function to which admission is charged or at which goods or services are sold.

13. "*Candidate's committee*" means the committee designated by the candidate to receive contributions, expend funds, or incur indebtedness in excess of two hundred fifty dollars in any calendar year on behalf of the candidate.

14. "*Committee*" includes a political committee and a candidate's committee.

15. "*Disclosure report*" means a statement of contributions received, expenditures made, and indebtedness incurred on forms prescribed by rules promulgated by the commission in accordance with chapter 17A.

16. "*Ballot issue*" means a question, other than the nomination or election of a candidate to a public office, which has been approved by a political subdivision or the general assembly or is required by law to be placed before the voters of the political subdivision by a commissioner of elections, or to be placed before the voters by the state commissioner of elections.

17. "*National political party*" means a party which meets the definition of a political party established for this state by section 43.2, and which also meets the statutory definition of the term "political party" or a term of like import in at least twenty-five other states of the United States.

18. "*Consultant*" means a person who provides or procures services for or on behalf of a candidate including but not limited to consulting, public relations, advertising, fundraising, polling, managing or organizing services.

87 Acts, ch 112, §1, 2 SF 424
 Subsection 4, unnumbered paragraph 2 amended
 Subsection 6 amended

56.3 Committee treasurer—duties.

1. Every committee shall appoint a treasurer. An expenditure shall not be made by the treasurer or treasurer's designee for or on behalf of a committee without the approval of the chairperson of the committee, or the candidate.

2. A person who receives contributions in excess of one hundred dollars for a committee shall, not later than fifteen days from the date of receipt of the contributions or on demand of the treasurer, render to the treasurer the contributions and an account of the total of all contributions; including the name and address of each person making a contribution in excess of ten dollars, the amount of such contribution, and the date on which the contributions were received. The

treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee in a financial institution. All funds of a committee shall be segregated from any other funds of officers, members, or associates of the committee or the committee's candidate. However, if a candidate's committee receives contributions only from the candidate, or if a permanent organization temporarily engages in activity which qualifies it as a political committee and all expenditures of the organization are made from existing general operating funds and funds are not solicited or received for this purpose from sources other than operating funds, then that committee is not required to maintain a separate account in a financial institution.

3. The treasurer of a committee shall keep a detailed and exact account of:

- a. All contributions made to or for the committee.
- b. The name and mailing address of every person making contributions in excess of ten dollars, and the date and amount of the contribution.
- c. All disbursements made from contributions by or on behalf of the committee.
- d. The name and mailing address of every person to whom any expenditure is made, the purpose of the expenditure, the date and amount of the expenditure and the name and address of, and office sought by each candidate, if any, on whose behalf the expenditure was made. Notwithstanding this paragraph, the treasurer may keep a miscellaneous account for disbursements of less than five dollars which need only show the amount of the disbursement so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

e. Notwithstanding the provisions of subsection 3, paragraph "d", of this section, when an expenditure is made by a committee in support of the entire state or local political party ticket, only the name of the party shall be given.

4. The treasurer shall preserve all records required to be kept by this section for a period of one year from the date of the election.

87 Acts, ch 112, §3 SF 424
Subsection 2 amended

56.4 Reports filed with commission.

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

Political committees supporting or opposing candidates for both federal office and any elected office created by law or the Constitution of the state of Iowa shall file statements and reports with the commission in addition to any federal reports required to be filed with the secretary of state.

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

87 Acts, ch 112, §4 SF 424
Unnumbered paragraph 1 amended

56.5 Organization statement.

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization.

2. The statement of organization shall include:

a. The name, purpose, mailing address and telephone number of the committee.

b. The name, mailing address, and position of the committee officers.

c. The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and if the committee is supporting the entire ticket of any party, the name of the party.

d. The disposition of funds which will be made in the event of dissolution if the committee is not a statutory committee.

e. Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

f. A signed statement by the treasurer of the committee which shall be in the following form:

"I am aware that I am required to file disclosure reports if the committee receives contributions, makes expenditures, or incurs indebtedness in excess of two hundred fifty dollars in a calendar year for the purpose of supporting or opposing any candidate for public office or ballot issue."

g. The identification of any parent entity or other affiliates or sponsors.

h. The name of the financial institution in which the committee receipts will be deposited.

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the commission or commissioner not more than thirty days from the date of the change or dissolution.

4. A list, by office and district, of all candidates who have filed an affidavit of candidacy in the office of the secretary of state shall be prepared by the secretary of state and delivered to the commission not more than ten days after the last day for filing nomination papers.

5. A committee not domiciled in Iowa which makes a contribution to a candidate's committee or political committee domiciled in Iowa shall disclose each contribution to the commission. The committee shall either file a statement of organization under subsections 1 and 2 and file disclosure reports, the same as those required of Iowa-domiciled committees, under section 56.6, or shall file one copy of a verified statement with the commission and a second copy with the treasurer of the committee receiving the contribution. The form shall be completed and filed at the time the contribution is made. The verified statement shall be on forms prescribed by the commission and be attached to the report required of the committee receiving the contribution under section 56.6. The form shall include the complete name, address, and telephone number of the contributing committee, the state or federal jurisdiction under which it is registered or operates, the identification of any parent entity or other affiliates or sponsors, its purpose, the name and address of an Iowa resident authorized to receive service of original notice and the name and address of the receiving committee, the amount of the cash or in-kind contribution, and the date the contribution was made.

87 Acts, ch 112, §5 SF 424
Subsection 5 amended

56.6 Disclosure reports.

1. a. Each treasurer of a committee shall file with the commission or commissioner disclosure reports of contributions received and disbursed on forms prescribed by rules as provided by chapter 17A. The reports from all committees, except those committees for municipal and school elective offices and for local ballot issues, shall be filed on the twentieth day or mailed bearing a United States

postal service postmark dated on or before the nineteenth day of January, May, July and October of each year. The May, July and October reports shall be current as of five days prior to the filing deadline. The January report shall be the annual report covering activity through December 31. A candidate's committee, other than for municipal and school elective offices, for a year in which the candidate is not standing for election is not required to file the May and July reports. Reports for committees for a ballot issue placed before the voters of the entire state shall be filed at the January, May, July, and October deadlines.

b. A candidate's committee of a candidate for statewide office or the general assembly shall file a supplementary report in a year in which a primary, general or special election for that office is held if the committee of a candidate for governor receives ten thousand dollars or more, a committee of a candidate for any other statewide office receives five thousand dollars or more, or the committee of a candidate for the general assembly receives one thousand dollars or more after the close of the period covered by the last report filed prior to that primary, general or special election. The amounts of contributions causing a supplementary report under this paragraph shall include the estimated fair market value of in-kind contributions. The report shall be filed by the Friday immediately preceding the election and be current through the Tuesday immediately preceding the election.

c. A candidate's committee of a state officeholder shall file a letter report to be received within fourteen days of the receipt of any contribution from a political committee or from a lobbyist registered under the rules adopted by either house of the general assembly while the general assembly is in session. The committee may request, in writing, a fourteen-day extension on a letter report which shall be granted if received on or before the date the report is due. The letter report shall notify the commission of the following:

- (1) The name of the candidate's committee.
- (2) The name and complete address of the political committee or registered lobbyist making the contribution.
- (3) The amount of the contribution.
- (4) The date the contribution was received.
- (5) In the event the contribution was caused by a fundraiser, an explanation of the sponsor and type of event held.

The provisions of this paragraph are in addition to any other reporting requirements of this chapter and any reporting rules adopted by either house of the general assembly.

d. A candidate's committee for a candidate for the general assembly at a special election shall file a report by the fourteenth day prior to the special election which is current through the nineteenth day prior to the special election.

e. Committees for municipal and school elective offices and local ballot issues shall file their first reports five days prior to any election in which the name of the candidate or the local ballot issue which they support or oppose appears on the printed ballot and shall file their next report on the first day of the month following the final election in a calendar year in which the candidate's name or the ballot issue appears on the ballot. A committee supporting or opposing a candidate for a municipal or school elective office or a local ballot issue shall continue to file a disclosure report on the first day of every month until it dissolves. These reports shall be current to five days prior to the filing deadline and are considered timely filed if mailed bearing a United States postal service postmark one or more calendar days preceding the due date.

f. A state statutory political committee and congressional district committees as authorized by the constitution of the state statutory political committee are not subject to this subsection if the state statutory political committee and congressional district political committees file copies of campaign disclosure reports as required by federal law with the commission at the times the reports are required to be filed under federal law, provided that the federal reports contain all

information required by this chapter. A committee of a national political party is not required to file a disclosure report with the commission if it is required by federal law to file a campaign disclosure report with a federal agency.

2. If any committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it shall no longer receive contributions or make disbursements, the treasurer of the committee shall notify the commission or the commissioner within thirty days following such dissolution by filing a dissolution report on forms prescribed by the commission. Moneys refunded in accordance with a dissolution statement shall be considered a disbursement or expense but the names of persons receiving refunds need not be released or reported unless the contributors' names were required to be reported when the contribution was received.

3. Each report under this section shall disclose:

a. The amount of cash on hand at the beginning of the reporting period.

b. The name and mailing address of each person who has made one or more contributions of money to the committee including the proceeds from any fund-raising events except those reportable under paragraph "f" of this subsection, when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

(1) For any candidate for school or township office	\$ 25
(2) For any candidate for city office	\$ 25
(3) For any candidate for county office	\$ 25
(4) For any candidate for the general assembly	\$ 25
(5) For any candidate for the Congress of the United States	\$100
(6) For any candidate for statewide office	\$ 25
(7) For any committee of a national political party	\$200
(8) For any state statutory political committee	\$200
(9) For any county statutory political committee	\$ 50
(10) For any other political committee	\$ 25
(11) For any ballot issue	\$ 25

c. The total amount of contributions made to the political committee during the reporting period and not reported under paragraph "b" of this subsection.

d. The name and mailing address of each person who has made one or more in kind contributions to the committee when the aggregate market value of the in kind contribution in a calendar year exceeds the amount specified in subsection 3, paragraph "b," of this section. In kind contributions shall be designated on a separate schedule from schedules showing contributions of money and shall identify the nature of the contribution and provide its estimated fair market value.

e. Each loan to any person or committee within the calendar year in an aggregate amount in excess of those amounts enumerated in the schedule in paragraph "b" of this subsection, together with the name and mailing address of the lender and endorsers, the date and amount of each loan received, and the date and amount of each loan repayment. Loans received and loan repayments shall be reported on a separate schedule.

f. The total amount of proceeds from any fund-raising event. Contributions and sales at fund-raising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph "b" of this subsection shall be designated separately from in kind and monetary contributions and the report shall include the name and address of the donor, a description of the product, the market value of the product, the sales price of the product, and the name and address of the purchaser.

g. The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount, purpose, and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous

disbursements so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars. If disbursements are made to a consultant, the consultant shall provide the committee with a statement of disbursements made by the consultant during the reporting period showing the name and address of the recipient, amount, purpose, and date to the same extent as if made by the candidate, which shall be included in the report by the committee.

h. The amount and nature of debts and obligations owed in excess of those amounts stated in the schedule in paragraph "b" of this section by the committee. Loans made to a committee and reported under paragraph "b" of this subsection shall not be considered a debt or obligation under this paragraph. A loan made by a committee to any person shall be considered a disbursement.

i. The aggregate amount received by a candidate or an officeholder in any form of an honorarium in excess of those amounts enumerated in the schedule in paragraph "b" of this subsection.

j. If a person listed under paragraph "b", "d", "e", or "f" as making a contribution or loan to or purchase from a candidate's committee is related to the candidate within the third degree of consanguinity or affinity, the existence of that person's family relationship shall be indicated on the report.

k. The name and mailing address of each person with whom a candidate's committee has entered into a contract during the reporting period for future or continuing performance and the nature of the performance, period of performance and total, anticipated compensation for performance. For a report filed under subsection 1, paragraph "b", this paragraph also requires the reporting of estimates of performance which the candidate's committee reasonably expects to contract for during the balance of the period running until thirty days after the election.

l. Other pertinent information required by this chapter, by rules adopted pursuant to this chapter, or forms approved by the commission.

4. If no contributions have been accepted nor any disbursements made or indebtedness incurred during that reporting period, the treasurer of the committee shall file a disclosure statement which shows only the amount of cash on hand at the beginning of the reporting period.

5. A committee shall not dissolve until all loans, debts and obligations are paid, forgiven or transferred and the remaining money in the account is distributed according to the organization statement. If a loan is transferred or forgiven, the amount of the transferred or forgiven loan must be reported as an in-kind contribution and deducted from the loans payable balance on the disclosure form. A statutory political committee is prohibited from dissolving, but may be placed in an inactive status upon the approval of the commission. Inactive status may be requested for a statutory political committee when no officers exist and the statutory political committee has ceased to function. The request shall be made by the previous treasurer or chairperson of the committee and by the appropriate state statutory political committee. A statutory political committee granted inactive status shall not solicit or expend funds in its name until the committee reorganizes and fulfills the requirements of a political committee under this chapter.

6. A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the permanent organization ceases to be involved in the political activity, it shall dissolve the political committee.

56.14 Political advertisements.

A person who causes the publication or distribution of published material after July 1, 1984, designed to promote or defeat the nomination or election of a candidate for public office or the passage of a constitutional amendment or public measure shall include conspicuously on the published material the identity and address of the person responsible for the material. If the person responsible is an organization, the name of one officer of the organization shall appear on the material. However, if the organization is a committee which has filed a statement of organization under this chapter, only the name of the committee is required to be included on the published material. This section does not apply to the editorials or news articles of a newspaper or magazine which are not political advertisements. For the purpose of this section, "*published material*" means any newspaper, magazine, shopper, outdoor advertising facility, poster, yard sign including hand lettered signs, direct mailing, brochure, or any other form of printed general public political advertising; however, the identification need not be conspicuous on posters. This section requires that the identification on yard signs be in letters at least one inch high; however, if the yard sign is authorized by the candidate's committee or the candidate, no identification is required by this section. This section does not apply to bumper stickers, pins, buttons, pens, matchbooks, and similar small items upon which the inclusion of the disclaimer would be impracticable or to published material which is subject to federal regulations regarding a disclaimer requirement. Yard signs are subject to removal by highway authorities as provided in section 319.13. Notice may be provided to the chairperson of the appropriate county central committee if the highway authorities are unable to provide notice to the candidate, candidate's committee, or political committee regarding the yard sign.

87 Acts, ch 112, §8 SF 424
Section amended

CHAPTER 68B

CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES

68B.2 Definitions.

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

1. "*Agency*" means a department, division, board, commission, or bureau of the state, including a regulatory agency, or any of its political subdivisions.
2. "*Candidate*" means a candidate as defined in section 56.2 and includes a person elected to public office until the person takes office.
3. "*Compensation*" means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.
4. "*Employee*" means a full-time, salaried employee of the state of Iowa and does not include part-time employees or independent contractors. Employee includes but is not limited to all clerical personnel.
5. a. "*Gift*" means a rendering of money, property, services, discount, loan forgiveness, payment of indebtedness, or anything else of value in return for which legal consideration of equal or greater value is not given and received, if the donor is in any of the following categories:
 - (1) Is doing or seeking to do business of any kind with the donee's agency.
 - (2) Is engaged in activities which are regulated or controlled by the donee's agency.
 - (3) Has interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the donee's official duty.
 - (4) Is a lobbyist with respect to matters within the donee's jurisdiction.
- b. However, "*gift*" does not mean any of the following:

(1) Campaign contributions.

(2) Informational material relevant to a public servant's official functions, such as books, pamphlets, reports, documents, or periodicals, and registration fees or tuition not including travel or lodging, for not more than three days, at seminars or other public meetings conducted in this state, at which the public servant receives information relevant to the public servant's official functions. Information or participation received under the exclusion of this paragraph may be applied to satisfy a continuing education requirement of the donee's regulated occupation or profession if the donee pays any registration costs exceeding thirty-five dollars.

(3) Anything received from a person related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

(4) An inheritance.

(5) Anything available to or distributed to the public generally without regard to official status of the recipient.

(6) Food, beverages, registration, and scheduled entertainment at group events to which all members of either house or both houses of the general assembly are invited.

(7) Actual expenses for food, beverages, travel, lodging, registration, and scheduled entertainment of the donee for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting.

(8) Plaques or items of negligible resale value given as recognition for public services.

6. "*Immediate family members*" means the spouse and minor children of a person required to file reports pursuant to this chapter or the rules adopted or executive order issued pursuant to this chapter.

7. "*Is doing business with the donee's agency*" means being a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the state or a political subdivision, or any agency thereof.

8. "*Legislative employee*" means a full-time officer or employee of the general assembly but does not include members of the general assembly.

9. "*Local official*" and "*local employee*" mean an official or employee of a political subdivision of this state.

10. "*Member of the general assembly*" means an individual duly elected to the senate or the house of representatives of the state of Iowa.

11. "*Official*" means an officer of the state of Iowa receiving a salary or per diem whether elected or appointed or whether serving full-time or part-time. "*Official*" includes but is not limited to supervisory personnel and members of state agencies and does not include members of the general assembly or legislative employees.

12. "*Public disclosure*" means a written report filed by the fifteenth day of the month following the month in which a gift is received as required by this chapter or required by rules adopted or executive order issued pursuant to this chapter.

13. "*Regulatory agency*" means the department of agriculture and land stewardship, department of employment services, department of commerce, department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue and finance, department of inspections and appeals, department of personnel, public employment relations board, department of transportation, civil rights commission, department of public defense, and department of natural resources.

Where the terms "*legislative employee*", "*member of the general assembly*", "*candidate*", "*employee*", "*local employee*", "*official*" or "*local official*" are used in this chapter, they include a firm of which any of those persons is a partner and a

corporation of which any of those persons holds ten percent or more of the stock either directly or indirectly, and the spouse and minor children of any of those persons.

87 Acts, ch 213, §1 SF 480
Effective June 5, 1987
Section stricken and rewritten

68B.5 Gifts solicited or accepted.

1. An official, employee, local official, local employee, member of the general assembly, candidate, legislative employee or that person's immediate family member shall not, directly or indirectly, solicit, accept, or receive from any one donor in any one calendar day a gift or a series of gifts having a value of thirty-five dollars or more.

2. A person shall not, directly or indirectly, offer or make a gift or a series of gifts to an official, employee, local official, local employee, member of the general assembly, candidate, or legislative employee, in any one calendar day, if the gift or series of gifts has a value of thirty-five dollars or more. A person shall not, directly or indirectly, join with one or more other persons to offer or make a gift or a series of gifts to an official, employee, local official, local employee, member of the general assembly, candidate, or legislative employee, in any one calendar day, if the gift or series of gifts has a total value of thirty-five dollars or more. The thirty-five dollar limitation of this section applies separately to a person and the person's immediate family member.

3. A person may give and an official, employee, local official, local employee, member of the general assembly, candidate, legislative employee or the person's immediate family member may accept in any one calendar day a gift or a series of gifts which has a value of thirty-five dollars or more and not be in violation of this section if the gift or series of gifts is donated within thirty days to a public body, a bona fide educational or charitable organization, or the department of general services. All such items donated to the department of general services shall be disposed of by assignment to state agencies for official use or by public sale.

87 Acts, ch 213, §2 SF 480
Effective June 5, 1987
Section stricken and rewritten

68B.8 Additional penalty.

In addition to any penalty contained in any other provision of law, a person who knowingly and intentionally violates a provision of section 68B.3 to 68B.6 is guilty of a serious misdemeanor and may be reprimanded, suspended, or dismissed from the person's position or otherwise sanctioned.

87 Acts, ch 213, §3 SF 480
Amendment effective June 5, 1987
Section amended

68B.10 Legislative ethics committee.

There shall be an ethics committee in the senate and an ethics committee in the house, each to consist of seven members; three members to be appointed by the majority leader in each house, two members by the minority leader in each house and two individuals who shall not be employees of the general assembly by the chief justice of the Iowa supreme court.

The two individuals appointed by the chief justice of the supreme court shall receive a per diem of forty dollars and travel expenses at the same rate as paid members of interim committees for attending meetings of the ethics committee. Members of the general assembly shall receive a per diem of forty dollars and travel expenses at the same rate as paid members of interim committees for attending meetings held when the general assembly is not in session. The per diem and expenses shall be paid from funds appropriated by section 2.12.

Each committee shall elect a chairperson and shall have the following powers, duties and functions:

1. Prepare a code of ethics within thirty days after the commencement of the session.

2. Prepare rules relating to lobbyists and lobbying activities in the general assembly.

3. Issue advisory opinions interpreting the intent of constitutional and statutory provisions relating to legislators and lobbyists as well as interpreting the code of ethics and rules issued pursuant to this section. Opinions shall be issued when approved by a majority of the seven members and may be issued upon the written request of a member of the general assembly or upon the committee's initiation. Opinions are not binding on the legislator or lobbyist.

4. Receive and investigate complaints and charges against members of its house alleging a violation of the code of ethics, rules governing lobbyists, this chapter, or other matters referred to it by its house. The committee shall recommend rules for the receipt and processing of complaints made during the legislative session and those made after the general assembly adjourns.

5. Recommend legislation relating to legislative ethics and lobbying activities.

The ethics committees may employ independent legal counsel to assist them in carrying out their duties under this chapter with the approval of a committee's house when the general assembly is in session and with the approval of the rules and administration committee of that house when the general assembly is not in session. Payment of costs for the independent legal counsel shall be made from section 2.12.

The code of ethics and rules relating to lobbyists and lobbying activities shall not become effective until approved by the members of the house to which the proposed code and rules apply. The code or rules may be amended either upon the recommendation of the ethics committee or by members of the general assembly.

Violation of the code of ethics may result in censure, reprimand, or other sanctions as determined by a majority of the member's house. However, a member may be suspended or expelled and the member's salary forfeited only if directed by a two-thirds vote of the member's house. A suspension, expulsion, or forfeiture of salary shall be for the duration specified in the directing resolution. However, it shall not extend beyond the end of the general assembly during which the violation occurred. Violation of a rule relating to lobbyists and lobbying activities may result in censure, reprimand, or other sanctions as determined by a majority of the members of the house in which the violation occurred. However, a lobbyist may be suspended from lobbying activities for the duration provided in the directing resolution only if directed by a two-thirds vote of the house in which the violation occurred.

87 Acts, ch 213, §4-7 SF 480
 Amendments effective June 5, 1987
 Subsection 3 amended
 Subsection 4 stricken and rewritten
 NEW unnumbered paragraph after subsection 5
 Last unnumbered paragraph amended

68B.11 Reporting of gifts and financial disclosure.

1. The house of representatives and the senate shall adopt rules requiring the reporting of gifts made to members of the general assembly, legislative employees, and their immediate family members. The rules shall require public disclosure of the nature, amount, date, and donor of a gift or gifts from any one donor made to one of those individuals which exceed fifteen dollars in cumulative value in any one calendar day. The rules shall require such disclosure by both the donor and donee. However, the rules of either or both houses may waive the reporting of food and beverage provided for immediate consumption in the presence of the donor.

2. The governor shall issue an executive order requiring the reporting of gifts made to officials and employees of the executive department of the state and their

immediate family members. The executive order shall require public disclosure of the nature, amount, date, and donor of a gift or gifts from any one donor made to one of those individuals which exceeds fifteen dollars in cumulative value in any one calendar day. The executive order shall require such disclosure by both the donor and donee. The executive order may waive the reporting of food and beverage provided for immediate consumption in the presence of the donor.

3. The supreme court of this state shall adopt rules requiring the reporting of gifts made to officials and employees of the judicial department of this state and their immediate family members. The rules shall require public disclosure of the nature, amount, date, and donor of a gift or gifts from any one donor made to one of those individuals which exceeds fifteen dollars in cumulative value in any one calendar day. The rules shall require such disclosure by both the donor and donee. The rules may waive the reporting of food and beverage provided for immediate consumption in the presence of the donor.

4. The governing body of a political subdivision of this state shall adopt rules requiring the reporting of gifts made to its respective members and their immediate family members and its local officials and local employees and their immediate family members. The rules as adopted shall require public disclosure of the nature, amount, date, and donor of a gift or gifts from any one donor made to one of those individuals which exceeds fifteen dollars in cumulative value in any one calendar day. The rules shall require such disclosure by both the donor and donee. The rules may waive the reporting of food and beverage provided for immediate consumption in the presence of the donor. Copies of the rules and reports shall be filed with the county auditor of the county in which the political subdivision is located.

The secretary of state shall develop a standard form for public disclosure of gifts in compliance with this subsection which shall be available at every county auditor's office without cost.

5. *a.* In determining the value of a gift, an individual making a gift on behalf of more than one person shall not divide the value of the gift by the number of persons on whose behalf the gift is made.

b. The value of a gift to the donee is the value actually received.

c. For the purposes of the reporting requirements of this section, a donor of a gift made by more than one individual to one or more donees shall report the gift if the total value of the gift to the donee exceeds fifteen dollars.

6. The rules required under this section shall provide that expenses for food, beverages, registration, and scheduled entertainment at group events to which all members of either house or both houses of the general assembly have been invited shall be reported for each such event by reporting the date, location, and total expense incurred by the donor or donors.

7. Reporting requirements adopted or issued under this section may include requirements relating to the reporting of income which is not a gift.

8. A person who does not make public disclosure of gifts as required by this chapter or the rules adopted or executive order issued pursuant to this chapter is guilty of a serious misdemeanor.

CHAPTER 69

VACANCIES IN OFFICE—REMOVAL FOR NONATTENDANCE—TERMS OF CONFIRMED APPOINTEES

69.8 Vacancies—how filled.

Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. *United States senator.* In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor. An appointment made under this subsection shall be for the period until the vacancy is filled by election pursuant to law.

2. *State offices.* In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided. An appointment made under this subsection to a state office subject to section 69.13, subsection 1, shall be for the period until the vacancy is filled by election pursuant to law.

3. *County offices.* In county offices, by the board of supervisors.

4. *Board of supervisors.* In the membership of the board of supervisors, by the treasurer, auditor, and recorder. In the event that any of these offices have been abolished through consolidation, the county attorney shall serve on this committee.

5. *Elected township offices.* When a vacancy occurs in an elective township office under section 39.22, including trustee, the vacancy shall be filled, by the trustees, but if the offices of two or three trustees are vacant, the county board of supervisors may fill the vacancies. If the offices of three trustees are vacant, the board may adopt a resolution stating that the board will exercise all powers and duties assigned by law to the trustees of the township in which the vacancies exist until the vacancies may be filled by election. If a township office vacancy is not filled by the trustees within thirty days after the vacancy occurs, the board of supervisors may appoint a successor to the unexpired term.

87 Acts, ch 68, §4 HF 47
Subsection 5 amended

69.12 Officers elected to fill vacancies—tenure.

When a vacancy occurs in any nonpartisan elective office of a political subdivision of this state, and the statutes governing the office in which the vacancy occurs require that it be filled by election or are silent as to the method of filling the vacancy, it shall be filled pursuant to this section. As used in this section, "pending election" means any election at which there will be on the ballot either the office in which the vacancy exists, or any other office to be filled or any public question to be decided by the voters of the same political subdivision.

1. If the unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election, the vacancy shall be filled in accordance with this subsection. The fact that absentee ballots were distributed or voted before the vacancy occurred or was declared shall not invalidate the election.

a. A vacancy shall be filled at the next pending election if it occurs:

(1) Sixty or more days prior to the election, if it is a general or primary election.

(2) Fifty-two or more days prior to the election if it is a regularly scheduled or special city election.

(3) Forty-five or more days prior to the election, if it is a regularly scheduled school election.

(4) Forty or more days prior to the election, if it is a special election.

b. Nomination papers on behalf of candidates for a vacant office to be filled pursuant to paragraph "a" of this subsection shall be filed, in the form and manner prescribed by applicable law, by five o'clock p.m. on:

- (1) The fifty-fifth day prior to a general or primary election.
- (2) The forty-seventh day prior to a regularly scheduled or special city election.
- (3) The fortieth day prior to a regularly scheduled school election.
- (4) The twenty-fifth day prior to a special election.

c. A vacancy which occurs at a time when paragraph "a" of this subsection does not permit it to be filled at the next pending election shall be filled by appointment as provided by law until the succeeding pending election.

2. When the unexpired term of office in which the vacancy occurs will expire within seventy days after the date of the next pending election, or after the date of a preceding election in which that office was on the ballot, the person elected to the office for the succeeding term shall also be deemed elected to fill the remainder of the unexpired term. If the vacancy is on a multimember body to which more than one nonincumbent is elected for the succeeding term, the nonincumbent who received the most votes shall be deemed elected to fill the remainder of the unexpired term. A person so elected to fill an unexpired term shall qualify within the time required by sections 63.3 and 63.8. Unless other requirements are imposed by law, qualification for the unexpired term shall also constitute qualification for the full term to which the person was elected.

87 Acts, ch 221, §31 HF 600
Subsection 1, paragraphs a and b amended

69.16 Appointive boards—political affiliation.

All appointive boards, commissions, and councils of the state established by the Code if not otherwise provided by law shall be bipartisan in their composition. No person shall be appointed or reappointed to any board, commission, or council established by the Code if the effect of that appointment or reappointment would cause the number of members of the board, commission, or council belonging to one political party to be greater than one-half the membership of the board, commission, or council plus one.

In the case where the appointment of members of the general assembly is allowed, and the law does not otherwise provide, if an even number of legislators are appointed they shall be equally divided by political party affiliation; if an odd number of members of the general assembly is appointed, the number representing a certain political party shall not exceed by more than one the legislative members of the other political party who may be appointed. If there are multiple appointing authorities for a board, commission or council, the appointing authorities shall consult to avoid a violation of this section. This section shall not apply to any board, commission, or council established by the Code for which other restrictions regarding the political affiliations of members are provided by law.

87 Acts, ch 218, §7 SF 148
Unnumbered paragraph 1 amended

69.16A Gender balance.

All appointive boards, commissions, committees and councils of the state established by the Code if not otherwise provided by law shall be gender balanced. No person shall be appointed or reappointed to any board, commission, committee, or council established by the Code if that appointment or reappointment would cause the number of members of the board, commission, committee, or council of one gender to be greater than one-half the membership of the board, commission, committee, or council plus one. If there are multiple appointing authorities for a board, commission, committee, or council, they shall consult each other to avoid a

violation of this section. This section shall not prohibit an individual from completing a term being served on June 30, 1987.

87 Acts, ch 218, §8 SF 148
Section amended

CHAPTER 74

PUBLIC OBLIGATIONS NOT PAID FOR WANT OF FUNDS

74.8 Designation of tax-exempt public warrants.

Each public issuer of warrants may designate the warrants as tax-exempt public warrants if the issuer complies with the tax-exempt reporting requirements of the federal Internal Revenue Code.

87 Acts, ch 104, §1 HF 536
NEW section

CHAPTER 74A

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.5 Relative rate on assessment bonds. Repealed by 87 Acts, ch 104, §6.
HF 536

CHAPTER 75

AUTHORIZATION AND SALE OF PUBLIC BONDS

75.2 Notice of sale.

When public bonds are offered for sale, the official in charge of the bond issue shall, by advertisement published at least once, the last one of which shall be not less than four nor more than twenty days before the sale in a newspaper located in the county or a county contiguous to the place of sale, give notice of the time and place of sale of the bonds, the amount to be offered for sale, and any further information which the official deems pertinent.

87 Acts, ch 43, §1 SF 265
Section amended

CHAPTER 76

PROVISIONS RELATED TO PUBLIC BONDS AND DEBT OBLIGATIONS

76.16 Debtor status prohibited.

A city, county, or other political subdivision of this state shall not be a debtor under chapter 9 of the federal Bankruptcy Code, 11 U.S.C. §901 et seq., except as otherwise specifically provided in this chapter.

87 Acts, ch 104, §2 HF 536
NEW section

76.17 Powers of public issuers.

1. A public body authorized to issue bonds may elect to issue bonds bearing a variable or fluctuating rate of interest which is determined on one or more intervals by reference to an index or standard, or as fixed by an interest rate indexing or remarketing agent retained by the issuer of the bonds. A public issuer

of public bonds may provide for additional security or liquidity, enter into agreements for, and expend funds for policies of insurance, letters of credit, lines of credit, or other forms of security issued by financial institutions for the payment of principal, premium, if any, and interest on the bonds. A public issuer of public bonds may also enter into contracts and pay for the services of underwriters, interest rate indexing agents, remarketing agents, trustees, financial consultants, depositories, and other services as determined by the governing body. In the case of general obligation bonds, fees for the services and costs of additional security and liquidity shall be considered incurred in lieu of interest and may be levied through the fund for payment of debt service on the bonds. Bonds issued under this section may be sold at public or private sale as determined by the governing body.

2. This section provides alternative and additional power for the issuance of bonds and is not an amendment to any other statute or a limitation upon powers under any other law.

3. A public issuer of public bonds may provide for the purchase of bonds before their maturity and the remarketing of purchased bonds without causing the redemption of the purchased bonds.

87 Acts, ch 104, §3 HF 536
NEW section

76.18 Covenants authorized—tax exemption.

A public issuer of bonds or other debt obligations may covenant that the issuer will comply with requirements or limitations imposed by the Internal Revenue Code to preserve the tax exemption of interest payable on the bonds or obligations and may carry out and perform other covenants, including but not limited to, the payment of any amounts required to be paid by the issuer to the United States government.

87 Acts, ch 104, §4 HF 536
NEW section

CHAPTER 79

PUBLIC OFFICERS AND EMPLOYEES, FINANCIAL PROVISIONS

79.1 Salaries—payment—vacations—sick leave—educational leave.

Salaries specifically provided for in an appropriation Act of the general assembly shall be in lieu of existing statutory salaries, for the positions provided for in the Act, and all salaries, including longevity where applicable by express provision in the Code, shall be paid according to the provisions of chapter 91A and shall be in full compensation of all services, including any service on committees, boards, commissions or similar duty for Iowa government, except for members of the general assembly. A state employee on an annual salary shall not be paid for a pay period an amount which exceeds the employee's annual salary transposed into a rate applicable to the pay period by dividing the annual salary by the number of pay periods in the fiscal year. Salaries for state employees other than annual salaries shall be established on an hourly basis.

All employees of the state earn two weeks' vacation per year during the first year of employment and through the fourth year of employment, and three weeks' vacation per year during the fifth and through the eleventh year of employment, and four weeks' vacation per year during the twelfth year through the nineteenth year of employment, and four and four-tenths weeks' vacation per year during the twentieth year through the twenty-fourth year of employment, and five weeks' vacation per year during the twenty-fifth year and all subsequent years of employment, with pay. One week of vacation is equal to the number of hours in the employee's normal work week. Vacation allowances accrue according to chapter

91A as provided by the rules of the department of personnel. The vacations shall be granted at the discretion and convenience of the head of the department, agency, or commission, except that an employee shall not be granted vacation in excess of the amount earned by the employee. Vacation leave earned under this paragraph shall not be cumulated to an amount in excess of twice the employee's annual rate of accrual. The head of the department, agency, or commission shall make every reasonable effort to schedule vacation leave sufficient to prevent any loss of entitlements. If the employment of an employee of the state is terminated the provisions of chapter 91A relating to the termination apply.

If said termination of employment shall be by reason of the death of the employee, such vacation allowance shall be paid to the estate of the deceased employee if such estate shall be opened for probate. If no estate be opened, the allowance shall be paid to the surviving spouse, if any, or to the legal heirs if no spouse survives.

Payments authorized by this section shall be approved by the department subject to rules of the department of personnel and paid from the appropriation or fund of original certification of the claim.

Commencing July 1, 1979, permanent full-time and permanent part-time employees of state departments, boards, agencies, and commissions, excluding employees covered under a collective bargaining agreement which provides otherwise, shall accrue sick leave at the rate of one and one-half days for each complete month of full-time employment. The accrual rate for part-time employees shall be prorated to the accrual rate for full-time employees. Sick leave shall not accrue during any period of absence without pay. Employees may use accrued sick leave for physical or mental personal illness, bodily injury, medically related disabilities, including disabilities resulting from pregnancy and childbirth, or contagious disease:

1. Which require the employee's confinement,
2. Which render the employee unable to perform assigned duties, or
3. When performance of assigned duties would jeopardize the employee's health or recovery.

Separation from state employment shall cancel all unused accrued sick leave. However, if an employee is laid off and the employee is re-employed by any state department, board, agency, or commission within one year of the date of the layoff, accrued sick leave of the employee shall be restored.

State employees, excluding state board of regents' faculty members with nine-month appointments, and employees covered under a collective bargaining agreement negotiated with the public safety bargaining unit who are eligible for accrued vacation benefits and accrued sick leave benefits, who have accumulated thirty days of sick leave, and who do not use sick leave during a full month of employment may elect to accrue up to one-half day of additional vacation. The accrual of additional vacation time by an employee for not using sick leave during a month is in lieu of the accrual of up to one and one-half days of sick leave for that month. The personnel commission may adopt the necessary rules and procedures for the implementation of this program for all state employees except employees of the state board of regents. The state board of regents may adopt necessary rules for the implementation of this program for its employees.

The head of any department, agency, or commission, subject to rules of the department of personnel, may grant an educational leave to employees for whom the head of the department, agency, or commission is responsible pursuant to section 79.25 and funds appropriated by the general assembly may be used for this purpose. The head of the department, agency, or commission shall notify the legislative council and the director of the department of personnel of all educational leaves granted within fifteen days of the granting of the educational leave. If the head of a department, agency or commission fails to notify the legislative council and the director of the department of personnel of an educational leave,

the expenditure of funds appropriated by the general assembly for the educational leave shall not be allowed.

The director of revenue and finance shall charge the entire payroll for a pay period to the fiscal year in which the payroll is paid.

However, a specific annual salary rate or annual salary adjustment commencing with a fiscal year shall commence on July 1 except that if a pay period overlaps two fiscal years, a specific annual salary rate or annual salary adjustment shall commence with the first day of a pay period as specified by the general assembly.

87 Acts, ch 227, §16 SF 504
Unnumbered paragraph 1 amended

79.3 Appraisers of property.

The appraisers appointed by authority of law to appraise property for any purpose shall be paid a reasonable amount determined by the sheriff of the county in which the property appraised is located. Unless otherwise provided, the amount paid shall be paid out of the property appraised or by the owner thereof.

87 Acts, ch 17, §4 SF 271
Rate, see §79.9
Section affirmed and reenacted, effective April 17, 1987; legislative findings; 87 Acts, ch 17, §1, 12 SF 271

79.28 Prohibitions relating to certain actions by state employees—penalty.

1. A person who serves as the head of a state department or agency or otherwise serves in a supervisory capacity within the executive branch of state government shall not prohibit an employee of the state from disclosing information to a member of the general assembly, the legislative service bureau, the legislative fiscal bureau, the citizens' aide, the computer support bureau, or the respective caucus staffs of the general assembly, or from disclosing information which the employee reasonably believes evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

2. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a disclosure of information by that employee to a member of the general assembly, the legislative service bureau, the legislative fiscal bureau, the citizens' aide, the computer support bureau, or the respective caucus staffs of the general assembly, or a disclosure of information which the employee reasonably believes evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

3. Subsections 1 and 2 do not apply if the disclosure of the information is prohibited by statute.

4. A person who violates subsection 1 or 2 commits a simple misdemeanor.

5. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for the employee's declining to participate in contributions or donations to charities or community organizations.

87 Acts, ch 19, §4 SF 268; 87 Acts, ch 27, §2 HF 427
Section 79.28, Code 1987, affirmed and reenacted, effective
April 17, 1987; legislative findings; 87 Acts, ch 19, §1, 6 SF 268
Section amended

CHAPTER 80

DEPARTMENT OF PUBLIC SAFETY

80.4 Highway patrol.

The Iowa highway safety patrol is established in the department of public safety. The patrol shall be under the direction of the director of public safety.

87 Acts, ch 232, §17 SF 518
Section amended

CHAPTER 81A

TRANSIENT MERCHANTS

81A.4 Bond required—applicability—forfeiture.

At the time of filing said application and as a part thereof, the applicant shall file with the secretary of state a bond, with sureties to be approved by the secretary of state, in a penal sum two times the value of the goods, wares or merchandise to be sold or offered for sale or the average inventory to be carried by such transient merchant engaged in or conducting an intermittent or temporary business as the case may be as shown by the application, running to the state of Iowa, for the use and benefit of any purchaser of any merchandise from such transient merchant who might have a cause of action of any nature arising from or out of such sale against the applicant or the owner of such merchandise if other than the applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any subdivision thereof, the bond to be further conditioned for the payment of any fines that may be assessed by any court against the applicant for violation of the provision of this chapter, and further conditioned for the payment and satisfaction of any and all causes of action against the applicant commenced within one year from the date of sale thereof, and arising from such sale, provided, however, that the aggregate liability of the surety for all such taxes, fines and causes of action shall in no event exceed the principal sum of such bond.

In such bond the applicant and surety shall appoint the secretary of state, the agent of the applicant and surety for the service of process. In the event of such service, the agent upon whom such service is made shall within five days after the date of service, mail by ordinary mail a true copy of the process served upon the agent to each party for whom the agent is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the jurisdiction of the court.

Such bond shall contain the consent of the applicant and surety that the district court of the county in which the plaintiff may reside or Polk county, Iowa shall have jurisdiction of all actions against the applicant or surety, or both, arising out of the sale. The state of Iowa, or any subdivision thereof, or any person having a cause of action against the applicant or surety arising out of said sale may join the applicant and surety on such bond in the same action, or may in such action sue either the applicant or the surety alone.

The requirements of this section also apply to transient merchants who are licensed in accordance with an ordinance of a city in the state of Iowa.

Notwithstanding the above provisions, the bond provided for in this section shall be forfeited to the state of Iowa upon the applicant's failure to pay the total of all taxes payable by or due from the applicant to the state which taxes are administered by the department of revenue and finance. The department shall adopt administrative rules for the collection of the forfeiture. Notice shall be provided to the surety and to the applicant. Notice to the applicant shall be mailed to the applicant's last known address. The applicant or the surety shall have the

opportunity to apply to the director of revenue and finance for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the director finds that the applicant has failed to pay the total of all taxes payable and the bond is forfeited, the director shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond. The surety shall not have standing to contest the amount of any taxes payable. For purposes of this section "*taxes payable*" means all tax, penalties, interest, and fees that the department has previously determined to be due by assessment or in an appeal of an assessment.

87 Acts, ch 60, §1 HF 394
NEW unnumbered paragraphs 4 and 5

81A.10 Enforcement.

The attorney general, or designees of the attorney general, may seek an injunction from a court of competent jurisdiction in order to prohibit sales by a transient merchant who is in violation of this chapter.

87 Acts, ch 60, §2 HF 394
NEW section

CHAPTER 83

COAL MINING

83.7 Environmental protection performance standards.

The division shall adopt rules for environmental protection performance standards that are consistent with federal regulations authorized under the federal Surface Mining Control and Reclamation Act and amendments to that Act.

87 Acts, ch 47, §1 SF 338
Section stricken and rewritten

CHAPTER 83A

MINES

83A.19 Reclamation schedule.

An operator of a mine shall reclaim affected lands according to a schedule established by the division, but within a period not to exceed three years, after the filing of a report required under section 83A.18 indicating the mining of any part of a site has been completed.

For certain postmining land uses, such as a sanitary land fill, the division may allow an extended reclamation period.

An operator, upon completion of any reclamation work required by section 83A.17, shall apply to the division in writing for approval of the work. The division shall within a reasonable time determined by divisional rule inspect the completed reclamation work. Upon determination by the division that the operator has satisfactorily completed all required reclamation work on the land included in the application, the division shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct surface mining on the site.

87 Acts, ch 115, §11 SF 374
Unnumbered paragraph 2 amended

CHAPTER 84A

DEPARTMENT OF EMPLOYMENT SERVICES

84A.1 Department of employment services—director—divisions.

1. The department of employment services is created to administer the laws of this state relating to unemployment compensation insurance, job placement and training, employment safety, labor standards, and workers' compensation.

2. The chief executive officer of the department is the director who shall be appointed by the governor, subject to confirmation by the senate. The director shall serve at the pleasure of the governor. The director shall be subject to reconfirmation by the senate, under the confirmation procedures of section 2.32, during the regular session of the general assembly convening in January if the director will complete the director's fourth year in office on or before the following April 30. The governor shall set the salary of the director within the applicable salary range established by the general assembly. The director shall be selected solely on the ability to administer the duties and functions granted to the director and the department and shall devote full time to the duties of the director. If the office of director becomes vacant, the vacancy shall be filled in the same manner as the original appointment was made.

The director of the department of employment services shall serve as job service commissioner and shall prepare, administer, and control the budget of the department and its divisions and shall approve the employment of all personnel of the department and its divisions.

3. The department shall include the division of job service, the division of labor services, and the division of industrial services.

87 Acts, ch 234, §424 HF 671
Subsection 2, unnumbered paragraph 2 amended

CHAPTER 85

WORKERS' COMPENSATION

85.31 Death cases—dependents.

1. When death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury, during their lifetime, compensation upon the basis of eighty percent per week of the employee's average weekly spendable earnings, commencing from the date of death as follows:

a. To the surviving spouse for life or until remarriage, provided that upon remarriage two years' benefits shall be paid to the surviving spouse in a lump sum, if there are no children entitled to benefits.

b. To any child of the deceased until the child shall reach the age of eighteen, provided that a child beyond eighteen years of age shall receive benefits to the age of twenty-five if actually dependent, and the fact that a child is under twenty-five years of age and is enrolled as a full-time student in any accredited educational institution shall be a prima facie showing of actual dependency.

c. To any child who was physically or mentally incapacitated from earning at the time of the injury causing death for the duration of the incapacity from earning.

d. To all other dependents as defined in section 85.44 for the duration of the incapacity from earning.

The weekly benefit amount shall not exceed a weekly benefit amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the statewide average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time

of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent and two hundred percent, respectively, of the statewide average weekly wage as determined above. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage, or to the spendable weekly earnings of the employee, whichever are less. Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

2. When the injury causes the death of a minor employee whose earnings were received by the parent and such parent was wholly dependent upon the earnings of the minor employee for support at the time of the injury, the compensation to be paid such parent shall be the weekly compensation for an adult with like earnings. For the purposes of this section a stepparent shall be regarded as a parent only when the stepparent has actually received the stepparent's principal support from the stepchild who died as a result of compensable injuries.

3. If the employee leaves dependents only partially dependent upon the employee's earnings for support at the time of the injury, the weekly compensation to be paid as aforesaid, shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury.

4. Where an employee is entitled to compensation under this chapter for an injury received, and death ensues from any cause not resulting from the injury for which the employee was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability therefor shall terminate.

5. Except as otherwise provided by treaty, whenever, under the provisions of this and chapters 86 and 87, compensation is payable to a dependent who is an alien not residing in the United States at the time of the injury, the employer shall pay fifty percent of the compensation herein otherwise provided to such dependent, and the other fifty percent shall be paid into the second injury fund in the custody of the treasurer of state. But if the nonresident alien dependent is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefits of such law in as favorable degree as herein extended to the nonresident alien, then said compensation which would otherwise be payable to such dependent shall be paid into the second injury fund in the custody of the treasurer of state.

87 Acts, ch 111, §1 SF 449

Subsection 1, paragraph d, unnumbered paragraph 2 amended

85.34 Permanent disabilities.

Compensation for permanent disabilities and during a healing period for permanent partial disabilities shall be payable to an employee as provided in this section. In the event weekly compensation under section 85.33 had been paid to any person for the same injury producing a permanent partial disability, any such amounts so paid shall be deducted from the amount of compensation payable for the healing period.

1. *Healing period.* If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the date of injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

2. *Permanent partial disabilities.* Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1 of this section. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average weekly spendable earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to sixty-one and one-third percent of the statewide average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals ninety-two percent, one hundred twenty-two and two-thirds percent, one hundred fifty-three and one-third percent, and one hundred eighty-four percent, respectively, of the statewide average weekly wage as determined above. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage, or to the spendable weekly earnings of the employee, whichever are less. However, if the employee is a minor or a full-time student under the age of twenty-five in an accredited educational institution, the minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

- a. For the loss of a thumb, weekly compensation during sixty weeks.
- b. For the loss of a first finger, commonly called the index finger, weekly compensation during thirty-five weeks.
- c. For the loss of a second finger, weekly compensation during thirty weeks.
- d. For the loss of a third finger, weekly compensation during twenty-five weeks.
- e. For the loss of a fourth finger, commonly called the little finger, weekly compensation during twenty weeks.
- f. The loss of the first or distal phalange of the thumb or of any finger shall equal the loss of one-half of such thumb or finger and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount for the loss of such thumb or finger.
- g. The loss of more than one phalange shall equal the loss of the entire finger or thumb.
- h. For the loss of a great toe, weekly compensation during forty weeks.
- i. For the loss of one of the toes other than the great toe, weekly compensation during fifteen weeks.
- j. The loss of the first phalange of any toe shall equal the loss of one-half of such toe and the weekly compensation shall be paid during one-half of the time but not to exceed one-half of the total amount provided for the loss of such toe.
- k. The loss of more than one phalange shall equal the loss of the entire toe.
- l. For the loss of a hand, weekly compensation during one hundred ninety weeks.
- m. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm and the compensation therefor shall be weekly compensation during two hundred fifty weeks.
- n. For the loss of a foot, weekly compensation during one hundred fifty weeks.
- a. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred twenty weeks.
- p. For the loss of an eye, weekly compensation during one hundred forty weeks.
- q. For the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.

r. For the loss of hearing, other than occupational hearing loss as defined in section 85B.4, subsection 1, weekly compensation during fifty weeks, and for the loss of hearing in both ears, weekly compensation during one hundred seventy-five weeks. For occupational hearing loss, weekly compensation as provided in the Iowa occupational hearing loss Act [chapter 85B].

s. The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such, however, if said employee is permanently and totally disabled the employee may be entitled to benefits under subsection 3.

t. For permanent disfigurement of the face or head which shall impair the future usefulness and earnings of the employee in the employee's occupation at the time of receiving the injury, weekly compensation, for such period as may be determined by the industrial commissioner according to the severity of the disfigurement, but not to exceed one hundred fifty weeks.

u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the disability bears to the body of the injured employee as a whole.

If it is determined that an injury has produced a disability less than that specifically described in said schedule, compensation shall be paid during the lesser number of weeks of disability determined, as will not exceed a total amount equal to the same percentage proportion of said scheduled maximum compensation.

3. *Permanent total disability.* Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average weekly spendable earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the statewide average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent and two hundred percent, respectively, of the statewide average weekly wage as determined above. The minimum weekly benefit amount is equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage, or to the spendable weekly earnings of the employee, whichever are less. However, if the employee is a minor or a full-time student under the age of twenty-five in an accredited educational institution the minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. The weekly compensation is payable during the period of the employee's disability.

Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter, chapter 85A or chapter 85B for the same injury producing a total permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for such permanent total disability.

4. *Credits for excess payments.* If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess shall be credited against the liability of the employer for permanent partial disability under section 85.34,

subsection 2, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

87 Acts, ch 111, §2, 3 SF 449

Subsection 2, unnumbered paragraph 1 amended

Subsection 3, unnumbered paragraph 1 amended

85.36 Basis of computation.

The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:

1. In the case of an employee who is paid on a weekly pay period basis, the weekly gross earnings.

2. In the case of an employee who is paid on a biweekly pay period basis, one-half of the biweekly gross earnings.

3. In the case of an employee who is paid on a semimonthly pay period basis, the semimonthly gross earnings multiplied by twenty-four and subsequently divided by fifty-two.

4. In the case of an employee who is paid on a monthly pay period basis, the monthly gross earnings multiplied by twelve and subsequently divided by fifty-two.

5. In the case of an employee who is paid on a yearly pay period basis, the weekly earnings shall be the yearly earnings divided by fifty-two.

6. In the case of an employee who is paid on a daily, or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, not including overtime or premium pay, of said employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury.

7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

8. If at the time of the injury the hourly earnings have not been fixed or cannot be ascertained, the earnings for the purpose of calculating compensation shall be taken to be the usual earnings for similar services where such services are rendered by paid employees.

9. In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the weekly earnings shall be taken to be one-fiftieth of the total earnings which the employee has earned from all occupations during the twelve calendar months immediately preceding the injury.

10. If an employee earns either no wages or less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury.

a. In computing the compensation to be allowed a volunteer fire fighter, basic or advanced emergency medical care provider, or reserve peace officer, the earnings as a fire fighter, basic or advanced emergency medical care provider, or reserve peace officer shall be disregarded and the volunteer fire fighter, basic or

advanced emergency medical care provider, or reserve peace officer shall be paid an amount equal to the compensation the volunteer fire fighter, basic or advanced emergency medical care provider, or reserve peace officer would be paid if injured in the normal course of the volunteer fire fighter's, basic or advanced emergency medical care provider's, or reserve peace officer's regular employment or an amount equal to one hundred and forty percent of the statewide average weekly wage, whichever is greater.

b. If the employee was an apprentice or trainee when injured, and it is established under normal conditions the employee's earnings should be expected to increase during the period of disability, that fact may be considered in computing the employee's weekly earnings.

c. In computing the compensation to be paid to any employee who, before the accident for which the employee claims compensation, was disabled and drawing compensation under the provisions of this chapter, the compensation for each subsequent injury shall be apportioned according to the proportion of disability caused by the respective injuries which the employee shall have suffered.

Paragraph "c" of this subsection shall not apply to compensable injuries arising under the second injury compensation Act.

d. If the employee was an inmate as defined in section 85.59, the inmate's actual earnings shall be disregarded, and the weekly compensation rate shall be as set forth in section 85.59.

11. If a wage, or method of calculating a wage, is used for the basis of the payment of a workers' compensation insurance premium for a proprietor, partner, or officer of a corporation, the wage or the method of calculating the wage is determinative for purposes of computing the proprietor's, partner's, or officer's weekly workers' compensation benefit rate.

87 Acts, ch 91, §1 HF 615
Subsection 10, paragraph a amended

85.37 Compensation schedule.

If an employee receives a personal injury causing temporary total disability, or causing a permanent partial disability for which compensation is payable during a healing period, compensation for the temporary total disability or for the healing period shall be upon the basis provided in this section. The weekly benefit amount payable to any employee for any one week shall be upon the basis of eighty percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to sixty-six and two-thirds percent of the statewide average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury. However, as of July 1, 1975; July 1, 1977; July 1, 1979; and July 1, 1981, the maximum weekly benefit amount rounded to the nearest dollar shall be increased so that it equals one hundred percent, one hundred thirty-three and one-third percent, one hundred sixty-six and two-thirds percent, and two hundred percent, respectively, of the statewide average weekly wage as determined above. Total weekly compensation for any employee shall not exceed eighty percent per week of the employee's weekly spendable earnings. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage, or to the spendable weekly earnings of the employee, whichever are less.

Such compensation shall be in addition to the benefits provided by sections 85.27 and 85.28.

87 Acts, ch 111, §4 SF 449
Unnumbered paragraph 1 amended

85.59 Benefits for inmates and offenders.

For the purposes of this section, the term "inmate" includes a person confined in a reformatory, state penitentiary, release center, or other state penal or correctional institution while that person works in connection with the maintenance of the institution or in an industry maintained therein or while on detail to perform services on a public works project.

For purposes of this section, "inmate" includes a person who is performing unpaid community service under sections 907.13 and 910.2 or a work assignment of value to the state or to the public under chapter 232.

If an inmate is permanently incapacitated by injury in the performance of the inmate's work in connection with the maintenance of the institution or in an industry maintained in the institution, while on detail to perform services on a public works project, or is permanently or temporarily incapacitated in connection with the performance of unpaid community service under sections 907.13 and 910.2 or a work assignment of value to the state or to the public under chapter 232, that inmate shall be awarded only the benefits provided in section 85.27 and section 85.34, subsections 2 and 3. The weekly rate for such permanent disability is equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury.

Weekly compensation benefits under this section may be determined prior to the inmate's release from the institution, but payment of benefits to an inmate shall commence as of the time of the inmate's release from the institution either upon parole or final discharge. However, if the inmate is awarded benefits for an injury incurred in connection with the performance of unpaid community service under sections 907.13 and 910.2 or a work assignment of value to the state or to the public under chapter 232, weekly compensation benefits under this section shall be determined and paid as in other workers' compensation cases.

If an inmate is receiving benefits under the provisions of this section and is recommitted to an institution covered by this section, the benefits shall immediately cease. If benefits cease because of the inmate's recommitment, the benefits shall resume upon subsequent release from the institution.

If death results from the injury, death benefits shall be awarded and paid to the dependents of the inmate as in other workers' compensation cases except that the weekly rate shall be equal to sixty-six and two-thirds percent of the state average weekly wage paid employees as determined by the department of employment services under section 96.19, subsection 42, and in effect at the time of the injury.

Payment under this section shall be made promptly out of appropriations which have been made for that purpose, if any. An amount or part thereof which cannot be paid promptly from the appropriation shall be paid promptly out of money in the state treasury not otherwise appropriated.

The time limit for commencing an original proceeding to determine entitlement to benefits under this section is the same as set forth in section 85.26. If an injury occurs to an inmate so as to qualify the inmate for benefits under this section, notwithstanding the fact that payments of weekly benefits are not commenced, an acknowledgment of compensability shall be filed with the industrial commissioner within thirty days of the time the responsible authority receives notice or knowledge of the injury as required by section 85.23.

If a dispute arises as to the extent of disability when an acknowledgment of compensability is on file or when an award determining liability has been made, an action to determine the extent of disability must be commenced within one year of the time of the release of the inmate from the institution. This does not bar the right to reopen the claim as provided by section 85.26, subsection 2.

Responsibility for the filings required by chapter 86 for injuries resulting in permanent disability or death and as modified by this section shall be made in the same manner as for other employees of the institution.

87 Acts, ch 111, §5, 6 SF 449

See also §232.13

Unnumbered paragraphs 3 and 6 amended

85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. *“Employer”* includes and applies to a person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters and basic or advanced emergency medical care providers only, benefited fire district, and the legal representatives of a deceased employer. *“Employer”* includes and applies to a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education.

2. *“Worker”* or *“employee”* means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; an executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the Iowa highway safety patrol; a conservation officer; and a proprietor or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

“Worker” or *“employee”* includes an inmate as defined in section 85.59 and a person described in section 85.60.

“Worker” or *“employee”* includes a basic or advanced emergency medical care provider as defined in section 85.61, subsections 14, 15, and 16, only if an agreement is reached between the basic or advanced emergency medical care provider and the employer for whom the volunteer services are provided that workers' compensation coverage under chapters 85, 85A, and 85B is to be provided by the employer.

3. The following persons shall not be deemed *“workers”* or *“employees”*:

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business except as otherwise provided in section 85.1.

b. An independent contractor.

c. An owner-operator who as an individual or partner owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the owner-operator's vehicle if all of the following conditions are substantially present:

(1) The owner-operator is responsible for the maintenance of the vehicle.

(2) The owner-operator bears the principal burden of the vehicle's operating costs, including fuel, repairs, supplies, collision insurance, and personal expenses for the operator while on the road.

(3) The owner-operator is responsible for supplying the necessary personnel to operate the vehicle, and the personnel are considered the owner-operator's employees.

(4) The owner-operator's compensation is based on factors related to the work performed, including a percentage of any schedule of rates or lawfully published tariff, and not on the basis of the hours or time expended.

(5) The owner-operator determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

(6) The owner-operator enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee and requires the owner-operator to provide and maintain a certificate of workers' compensation insurance with the carrier.

d. Directors of a corporation who are not at the same time employees of the corporation; or directors, trustees, officers, or other managing officials of a nonprofit corporation or association who are not at the same time full-time employees of the nonprofit corporation or association.

e. Proprietors and partners who have not elected to be covered by the workers' compensation law of this state pursuant to section 85.1A.

4. The term "*worker*" or "*employee*" shall include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker's or employee's dependents as herein defined or the worker's or employee's legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor's or incompetent's guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors all minor employees shall be entitled to the benefits of this chapter and chapters 86 and 87 regardless of the age of such minor employee.

5. The words "*injury*" or "*personal injury*" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

6. The words "*personal injury arising out of and in the course of the employment*" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Personal injuries sustained by a volunteer fire fighter arise in the course of employment if the injuries are sustained at any time from the time the volunteer fire fighter is summoned to duty as a volunteer fire fighter until the time the volunteer fire fighter is discharged from duty by the chief of the volunteer fire department or the chief's designee.

Personal injuries sustained by basic or advanced emergency medical care providers, as defined in section 147.1, subsections 7 and 8 arise in the course of employment if the injuries are sustained at any time from the time the emergency medical care providers are summoned to duty until the time those duties have been fully discharged.

7. The word "*court*" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.

8. "*Volunteer fire fighter*" means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

9. "*Pay period*" means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

10. "*Payroll taxes*" means an amount, determined by tables adopted by the industrial commissioner pursuant to chapter 17A, equal to the sum of the following:

a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal

Revenue Code of 1954, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured.

11. "*Spendable weekly earnings*" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

12. "*Gross earnings*" means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

13. The words "*reserve peace officer*" shall mean a person defined as such by section 80D.1 who is not a full-time member of a paid law enforcement agency. A person performing such services shall not be classified as a casual employee.

14. "*First responder*" means an individual as defined in section 147.1, subsection 9, performing services as a first responder for a county, municipality, or township at the request of the county, municipality, or township, and who is not a full-time paid member of the emergency medical care service program. A person defined as a first responder under this subsection is not a casual employee.

15. "*Emergency rescue technician*" means an individual as defined in section 147.1, subsection 10, performing services as an emergency rescue technician for a county, municipality, or township at the request of the county, municipality, or township, and who is not a full-time paid member of the emergency medical care service program. A person defined as an emergency rescue technician under this subsection is not a casual employee.

16. "*Emergency medical technician-ambulance*" means an individual as defined in section 147.1, subsection 11, performing services as an emergency medical technician-ambulance for a county, municipality, or township at the request of the county, municipality, or township, and who is not a full-time paid member of the emergency medical care service program. A person defined as an emergency medical technician-ambulance under this subsection is not a casual employee.

87 Acts, ch 91, §2-5 HF 615
 Subsection 1 amended
 Subsection 2, NEW unnumbered paragraph 3
 Subsection 6, NEW unnumbered paragraph 3
 NEW subsections 14, 15 and 16

CHAPTER 88A

SAFETY INSPECTION OF AMUSEMENT RIDES

88A.10 Penalties.

1. Any person who operates an amusement device or ride, concession booth or related electrical equipment at a carnival or fair without having obtained a permit from the commissioner or who violates any order or rule issued by the commissioner under this chapter is guilty of a serious misdemeanor.

2. A person who interferes with, impedes, or obstructs in any manner the commissioner in the performance of the commissioner's duties under this chapter is guilty of a simple misdemeanor. A person who bribes or attempts to bribe the commissioner is subject to section 722.1.

87 Acts, ch 111, §7 SF 449
Subsection 2 amended

CHAPTER 89

BOILERS AND UNFIRED STEAM PRESSURE VESSELS

89.7 Insured equipment—certificate.

1. The inspection required by this chapter shall not be made by the commissioner if an owner or user of equipment specified by this chapter obtains an inspection by a representative of a reputable insurance company and obtains a policy of insurance upon the equipment from that insurance company. The representative conducting the inspection shall be commissioned by the commissioner as a special inspector for the year during which the inspection occurs and shall meet such other requirements as the commissioner may by rule establish. The commission shall be valid for one year and the special inspector shall pay a fee for the issuance of the commission. The commissioner shall establish the amount of the fee by rule.

2. The insurance company shall file a certificate of inspection on forms approved by the commissioner stating that the equipment is insured and that inspection shall be made in accordance with section 89.3.

3. Upon such showing and the payment of a fee, the commissioner shall issue a certificate of inspection by the division of labor services, which shall be valid only for the period specified in section 89.3. The commissioner shall establish the amount of the fee by rule.

4. The special inspector shall notify the user and the commissioner of any equipment or appurtenance found to be unsafe or unfit for operation in writing, setting forth the nature and extent of such defects and condition. The commissioner shall indicate to the user whether or not the equipment may be used without making repair or replacement of defective parts, or whether or how the equipment may be used in a limited capacity before repairs or replacements are made, and the commissioner may permit the user a reasonable time to make such repairs or replacements.

5. The failure of a boiler to have affixed an American Society of Mechanical Engineering tag does not in itself disqualify a boiler used on a tourist railroad or tourist train from being issued a certificate of inspection.

87 Acts, ch 15, §1 SF 434
NEW subsection 5

CHAPTER 89B

HAZARDOUS CHEMICALS RISKS—RIGHT TO KNOW

89B.4 Applicability to agricultural activities.

1. Except for section 89B.9, this chapter does not apply to a person engaged in farming as defined in this section; or a pesticide, as defined in section 206.2, subsection 1, used, stored, or available for sale by a certified private applicator as defined in section 206.2, subsection 18; or to activities which are covered under the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §135 et seq. However, such persons shall comply with the requirements of the regulations for the federal Insecticide, Fungicide, and Rodenticide Act, 40 C.F.R. §170, and the

requirements of and rules adopted under chapter 206 where applicable to the persons. As used in this section, "*farming*" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock, spraying, or harvesting. The department of agriculture and land stewardship shall cooperate with the division in an investigation of an agricultural employee's complaint filed pursuant to section 89B.9.

2. Notwithstanding subsection 1 a pesticide dealer, a commercial applicator, or a certified applicator who retails or stores a pesticide as defined in section 206.2, subsection 1, shall comply with sections 89B.14 and 89B.15 for those hazardous chemicals stored or available for sale.

87 Acts, ch 225, §201 HF 631
Subsection 1 amended

CHAPTER 90A

BOXING AND WRESTLING

90A.10 Maximum age for participants—amateur boxing.

1. A person over the age of thirty shall not participate as a contestant in an organized amateur boxing contest unless each contestant participating in the contest is over the age of thirty. A birth certificate, or other similar document, must be submitted at the time of the preflight physical examination in order to determine eligibility.

2. Subsection 1 does not apply to participants in regional, national, or international organized amateur boxing contests or to organized amateur boxing contests involving contestants who are serving in the military service.

87 Acts, ch 26, §1 HF 607
Section amended

CHAPTER 92

CHILD LABOR

92.22 Labor commissioner to enforce.

The labor commissioner shall enforce this chapter. Mayors and police officers, sheriffs, school superintendents, and school truant and attendance officers, within their several jurisdictions, shall co-operate in the enforcement of this chapter and furnish the commissioner and the commissioner's designees with all information coming to their knowledge regarding violations of this chapter. All such officers and any person authorized in writing by a court of record shall have the authority to enter, for the purpose of investigation, any of the establishments and places mentioned in this chapter and to freely question any person therein as to any violations of this chapter.

County attorneys shall investigate all complaints made to them of violations of this chapter, and prosecute all such cases of violation within their respective counties.

87 Acts, ch 111, §8 SF 449
Section amended

CHAPTER 93

ENERGY DEVELOPMENT AND CONSERVATION

93.11 Energy conservation trust fund established—receipts and disbursements.

1. *a.* The energy conservation trust fund is created within the state treasury. This state on behalf of itself, its citizens, and its political subdivisions accepts any moneys awarded or allocated to the state, its citizens, and its political subdivisions as a result of the federal court decisions and federal department of energy settlements resulting from alleged violations of federal petroleum pricing regulations and deposits the moneys in the energy conservation trust fund.

b. The energy conservation trust fund is established to provide for an orderly, efficient, and effective mechanism to make maximum use of moneys available to the state, in order to increase energy conservation efforts and thereby to save the citizens of this state energy expenditures. The moneys in the accounts in the fund shall be expended only upon appropriation by the general assembly and only for programs which will benefit citizens who may have suffered economic penalties resulting from the alleged petroleum overcharges.

c. The moneys awarded or allocated from each court decision or settlement shall be placed in a separate account in the energy conservation trust fund. Notwithstanding section 453.7, interest and earnings on investments from moneys in the fund shall be credited proportionately to the accounts in the fund.

d. Unless prohibited by the conditions applying to an account, the moneys in the energy conservation trust fund may be used for the payment of attorney fees and expenses incurred by the state to obtain the moneys and shall be paid by the director of revenue and finance from the available moneys in the fund subject to the approval of the attorney general.

e. However, petroleum overcharge funds received pursuant to claims filed on behalf of the state, its institutions, departments, agencies, or political subdivisions shall be deposited in the general fund of the state to be disbursed directly to the appropriate claimants in accordance with federal guidelines and subject to the approval of the attorney general.

2. The treasurer of state shall be the custodian of the energy conservation trust fund and shall invest the moneys in the fund, in consultation with the energy fund disbursement council established in subsection 3 and the investment board of the Iowa public employees' retirement system, in accordance with the following guidelines:

a. To maximize the rate of return on moneys in the fund while providing sufficient liquidity to make fund disbursements, including contingency disbursements.

b. To absolutely insure the fund against loss.

c. To use such investment tools as are necessary to achieve these purposes.

3. An energy fund disbursement council is established. The council shall be composed of the governor or the governor's designee, the director of the department of management, who shall serve as the council's chairperson, the administrator of the division of community action agencies of the department of human rights, the administrator of the energy and geological resources division of the department of natural resources, and a designee of the director of the department of transportation, who is knowledgeable in the field of energy conservation. The council shall include as nonvoting members two members of the senate appointed by the majority leader of the senate and two members of the house of representatives appointed by the speaker of the house. The legislative members shall be appointed upon the convening and for the period of each general assembly. Not more than one member from each house shall be of the same political party. The

council shall be staffed by the energy and geological resources division of the department of natural resources. The attorney general shall provide legal assistance to the council.

The council shall:

a. Oversee the investment of moneys deposited in the energy conservation trust fund.

b. Make recommendations to the governor and the general assembly regarding annual appropriations from the energy conservation trust fund.

c. Work with the energy and geological resources division in adopting administrative rules necessary to administer expenditures from the fund, encourage applications for grants and loans, review and select proposals for the funding of competitive grants and loans from the energy conservation trust fund, and evaluate their comparative effectiveness.

d. Monitor expenditures from the fund.

e. Approve any grants or contracts awarded from the energy conservation trust fund in excess of five thousand dollars.

f. Prepare, in conjunction with the energy and geological resources division, an annual report to the governor and the general assembly regarding earnings of and expenditures from the energy conservation trust fund.

4. The administrator of the energy and geological resources division of the department of natural resources shall be the administrator of the energy conservation trust fund. The administrator shall disburse moneys appropriated by the general assembly from the accounts in the fund in accordance with the federal court orders, law and regulation, or settlement conditions applying to the moneys in that account, and subject to the approval of the energy fund disbursement council if such approval is required. The council, after consultation with the attorney general, shall immediately approve the disbursement of moneys from the account in the fund for projects which meet the federal court orders, law and regulations, or settlement conditions which apply to that account.

5. The following accounts are established in the energy conservation trust fund:

- a. The Warner/Imperial account.
- b. The Amoco/Beldridge/Nordstrom account.
- c. The Exxon account.
- d. The Stripper Wells account.
- e. The Diamond Shamrock account.
- f. The Amoco Refined account.
- g. The OKC & Coline account.
- h. The other funds account.

6. The moneys in the account in the energy conservation trust fund distributed to the state as a result of the 1985 federal court decision finding Exxon corporation in violation of federal petroleum pricing regulations shall be expended, to the extent possible, over a period of no more than six years and shall be disbursed for projects which meet the strict guidelines of the five existing federal energy conservation programs specified in Pub. L. No. 97-377, §155, 96 Stat. 1830, 1919 (1982). The council shall approve the disbursement of moneys from the account in the fund for other projects only if the project meets one or more of the following conditions:

a. The projects meet the guidelines for allowable projects under a modification order entered by the federal court in the case involving Exxon corporation.

b. The projects meet the guidelines for allowable projects under a directive order entered by the federal court in the case involving Exxon corporation.

c. The projects meet the guidelines for allowable projects under the regulations adopted or written clarifications issued by the United States department of energy.

87 Acts, ch 230, §5-7 SF 517

Moneys transferred to energy conservation trust fund created in §93.11; 87 Acts, ch 230, §9

Subsections 1 and 4 stricken and rewritten

Subsection 3, unnumbered paragraph 1 amended

NEW subsections 5 and 6

93.15 Petroleum overcharge fund. Repealed by 87 Acts, ch 230, §10. SF 517 See §93.11.

93.19 Energy bank program.

The energy bank program is established by the department. The energy bank program consists of the following forms of assistance for school districts, area education agencies, cities, counties, and merged area schools:

1. Providing moneys from the petroleum overcharge fund for conducting energy audits under section 279.44.

2. Providing loans, leases, and other methods of alternative financing from the energy loan fund established in section 93.20 and section 93.20A for school districts, area schools, area education agencies, cities and counties to implement energy conservation measures.

3. Serving as a source of technical support for energy conservation management.

4. Providing assistance for obtaining insurance on the energy savings expected to be realized from the implementation of energy conservation measures.

5. Providing self-liquidating financing for school districts, area schools, area education agencies, cities, and counties, pursuant to section 93.20A.

For the purpose of this section, section 93.20, and section 93.20A, "*energy conservation measure*" means construction, rehabilitation, acquisition, or modification of an installation in a building which is intended to reduce energy consumption, or energy costs, or both, or allow the use of an alternative energy source, which may contain integral control and measurement devices.

87 Acts, ch 209, §1 HF 654

Section amended

93.20 Energy loan fund.

An energy loan fund is established in the office of the treasurer of state to be administered by the department. The department may make loans to school districts, area schools, area education agencies, cities, and counties for implementation of energy conservation measures identified in a comprehensive engineering analysis. Loans shall not be made for energy conservation measures that require more than an average of six years for the school district, area school, area education agency, city and county as an entity to recoup the actual or projected cost of construction and acquisition of the improvements; and cost of the engineering plans and specifications. For a school district, area school, area education agency, city or county to receive a loan from the fund, the department shall require completion of an energy management plan including an energy audit and a comprehensive engineering analysis. The department shall approve loans made under this section. Cities and counties shall repay the loans from moneys in their debt service funds. Area education agencies shall repay the loans from any moneys available to them.

School districts and area schools may enter into financing arrangements with the department or its duly authorized agents or representatives obligating the school district or area school to make payments on the loans beyond the current budget year of the school district or area school. Chapter 75 shall not be applicable. School districts shall repay the loans from moneys in either their general fund or schoolhouse fund. Area schools shall repay the loans from their general fund.

The department may accept gifts, federal funds, state appropriations, and other moneys for deposit in the energy loan fund or may fund the energy loan fund in accordance with section 93.20A.

For the purpose of this section, "loans" means loans, leases, or alternative financing arrangements.

87 Acts, ch 209, §2 HF 654
Section amended

93.20A Self-liquidating financing.

1. The department of natural resources may enter into financing agreements with school districts, area schools, area education agencies, cities, or counties in order to provide the financing to pay the costs of furnishing energy conservation measures. The provisions of section 93.20 defining eligible energy conservation measures and the method of repayment of the loans apply to financings under this section.

The financing agreement may contain provisions, including interest, term, and obligations to make payments on the financing agreement beyond the current budget year, as may be agreed upon between the department of natural resources and the school district, area school, area education agency, city, or county.

2. For the purpose of funding its obligation to furnish moneys under the financing agreements, or to fund the energy loan fund created in section 93.20, the treasurer of state, with the assistance of the department of natural resources, or the treasurer of state's duly authorized agents or representatives, may incur indebtedness or enter into master lease agreements or other financing arrangements to borrow to accomplish energy conservation measures, or the department of natural resources may enter into master lease agreements or other financing arrangements to permit school districts, area education agencies, area schools, cities, or counties to borrow sufficient funds to accomplish the energy conservation measure. The obligations may be in such form, for such term, bearing such interest and containing such provisions as the department of natural resources, with the assistance of the treasurer of state, deems necessary or appropriate. Funds remaining after the payment of all obligations have been redeemed shall be paid into the energy loan fund.

3. School districts, area schools, area education agencies, cities, or counties may enter into financing agreements and issue obligations necessary to carry out the provisions of the chapter. Chapter 75 shall not be applicable.

87 Acts, ch 209, §3 HF 654
NEW section

CHAPTER 96

EMPLOYMENT SECURITY AND DIVISION OF JOB SERVICE

96.3 Payment—determination—duration—child support intercept.

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 6, paragraph "g" (3), irrespective of when performed, shall not be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such regulations as the division of job service of the department of employment services may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to the individual's weekly benefit amount.

3. *Partial unemployment.* An individual who is partially unemployed in any week as defined in section 96.19, subsection 9, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

4. *Determination of benefits.* With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the commissioner shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage:
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

5. *Duration of benefits.* The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The commissioner shall maintain a separate account for each individual who earns wages in insured work. The commissioner shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the commissioner shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period.

Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

6. *Part-time workers.*

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The commissioner shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

7. *Recovery of overpayment of benefits.* If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The division of job service in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to the overpayment.

If the division determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

8. *Back pay.* If an individual receives benefits for a period of unemployment and subsequently receives a payment for the same period from the individual's employer in the form of or in lieu of back pay, the benefits shall be recovered. The division of job service, in its discretion, may reach an agreement with the individual and the employer to allow the employer to deduct the amount of the benefits from the back pay and remit a sum equal to that amount to the unemployment compensation fund and the balance to the individual, or may recover the amount of the benefits either by having a sum equal to that amount deducted from any future benefits payable to the individual or by having the individual pay to the division a sum equal to that amount. If an agreement is reached to allow the employer to deduct the amount of benefits from the back pay and remit that amount to the fund, the division shall not charge that amount to the employer's account under section 96.7.

9. *Child support intercept.*

a. An individual filing a claim for benefits under section 96.6, subsection 1 shall, at the time of filing, disclose whether the individual owes a child support obligation which is being enforced by the child support recovery unit established in section 252B.2. If an individual discloses that such a child support obligation is owed and the individual is determined to be eligible for benefits under this chapter, the division of job service shall notify the child support recovery unit of the individual's disclosure and deduct and withhold from benefits payable to the individual the amount specified by the individual.

b. However, if the child support recovery unit and an individual owing a child support obligation reach an agreement to have specified amounts deducted and withheld from the individual's benefits and the child support recovery unit

submits a copy of the agreement to the division, the division shall deduct and withhold the specified amounts.

c. However, if the division is garnished by the child support recovery unit under chapter 642 and an individual's benefits are condemned to the satisfaction of the child support obligation being enforced by the child support recovery unit, the division shall deduct and withhold from the individual's benefits that amount required through legal process.

Notwithstanding section 642.2, subsections 2, 3, 5, and 6 which restrict garnishments under chapter 642 to wages of public employees, the division may be garnished under chapter 642 by the child support recovery unit established in section 252B.2, pursuant to a judgment for child support against an individual eligible for benefits under this chapter.

Notwithstanding section 96.15, benefits under this chapter are not exempt from garnishment, attachment, or execution if garnished by the child support recovery unit, established in section 252B.2, to satisfy the child support obligation of an individual who is eligible for benefits under this chapter.

d. An amount deducted and withheld under paragraph "a", "b", or "c" shall be paid by the division to the child support recovery unit, and shall be treated as if it were paid to the individual as benefits under this chapter and as if it were paid by the individual to the child support recovery unit in satisfaction of the individual's child support obligations.

e. If an agreement for reimbursement has been made, the division shall be reimbursed by the child support recovery unit for the administrative costs incurred by the division under this section which are attributable to the enforcement of child support obligations by the child support recovery unit.

87 Acts, ch 222, §1, 2 SF 507; 87 Acts, ch 111, §9 SF 449

1987 amendments striking subsection 4, unnumbered paragraph 2, and subsection 5, unnumbered paragraph 2, are effective July 1, 1987, applicable to contribution rates for calendar year 1988; amendments repealed effective July 1, 1988, applicable to contribution rates for calendar year 1989 and subsequent years; section reverts on July 1, 1988, to its content before amendment and is reenacted in that form; 87 Acts, ch 222, §9, 10 SF 507

See Code editor's note

Subsection 4, unnumbered paragraph 2 stricken

Subsection 5, unnumbered paragraph 2 stricken

96.4 Required findings.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the division of job service finds that:

1. The individual has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the division may prescribe. The provisions of this subsection shall be waived if the individual is deemed temporarily unemployed as defined in section 96.19, subsection 9, paragraph "c".

2. The individual has made a claim for benefits in accordance with the provisions of section 96.6, subsection 1.

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed temporarily unemployed as defined in section 96.19, subsection 9, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "i".

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year

begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 6, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "*educational service agency*" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the commissioner by reason of the

application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. sec. 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the division of job service relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. sec. 2319(l), if wages for the work are not less than eighty percent of the individual's weekly benefit amount.

87 Acts, ch 222, §3 SF 507

1987 amendment striking subsection 7 applicable to benefit claims effectively filed for and after the first full week in calendar year 1988; 87 Acts, ch 222, §9 SF 507

Subsection 7 stricken

96.5 Causes for disqualification.

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the division of job service. But the individual shall not be disqualified if the division finds that:

a. The individual left employment in good faith for the sole purpose of accepting other employment, which the individual did accept, and that the individual remained continuously in said new employment for not less than six weeks. Wages earned with the employer that the individual has left shall, for the purpose of computing and charging benefits, be deemed wages earned from the employer with whom the individual accepted other employment and benefits shall be charged to the employer with whom the individual accepted other employment. The division shall advise the chargeable employer of the name and address of the former employer, the period covered, and the extent of benefits which may be charged to the account of the chargeable employer. In those cases where the new employment is in another state, no employer's account shall be charged with benefits so paid except that employers who are required by law or by their election to reimburse the fund for benefits paid shall be charged with benefits under this paragraph. In those cases where the individual left employment in good faith for the sole purpose of accepting better employment, which the individual did accept and such employment is terminated by the employer, or the individual is laid off after one week but prior to the expiration of six weeks, the individual, provided the individual is otherwise eligible under this chapter, shall be eligible for benefits and such benefits shall not be charged to any employer's account.

b. The individual has been laid off from the individual's regular employment and has sought temporary employment, and has notified the temporary employer that the individual expected to return to the individual's regular job when it became available, and the temporary employer employed the individual under these conditions, and the worker did return to the regular employment with the individual's regular employer as soon as it was available.

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the division, provided the individual is otherwise eligible.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the division, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

h. "Principal support" shall mean exclusive of the earnings of any child of the wage earner.

i. The individual has left employment in lieu of exercising a right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job.

j. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3; however, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the acquiring employer immediately becomes chargeable for the benefits paid which are based on the wages paid by the transferring employer.

2. *Discharge for misconduct.* If the division of job service finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

b. Provided further, if gross misconduct is established, the division shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection

with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

3. *Failure to accept work.* If the division of job service finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the employment office or the division or to accept suitable work when offered that individual, or to return to customary self-employment, if any. The division in co-operation with the employment office shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the division on forms provided by the division, unless the employers refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual from further benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the division finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment. However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

4. *Labor disputes.* For any week with respect to which the division of job service finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establish-

ment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that:

a. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

5. *Other compensation.* For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraphs "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the division of job service shall recover the excess amount of benefits paid by the division for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein.

6. *Benefits from other state.* For any week with respect to which or a part of which an individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

7. *Vacation pay.*

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed "wages" as defined in section 96.19, subsection 12, and shall be applied as provided in paragraph "c" hereof.

b. When, in connection with a separation or layoff of an individual, the individual's employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual's claim, designates by notice in writing to the division of job service the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the division not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed "wages" as defined in section 96.19, subsection 12, and shall be applied as provided in paragraph "c" of this subsection 7.

c. Of the wages described in paragraph "a" (whether or not the employer has designated the period therein described), or of the wages described in paragraph "b", if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual's weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual's benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs "a", "b" and "c", if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph "b", then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 12, for any period in excess of one week and such payments or the value of such obligations shall not be deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph "b", the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

8. *Administrative penalty.* If the division of job service finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the division makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as

determined by the division according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

9. *Athletes—disqualified.* Services performed by an individual, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods, if such individual performs such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such season or similar periods.

10. *Aliens—disqualified.* For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services or was permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

87 Acts, ch 78, §1 HF 596
Subsection 7, paragraph b amended

96.7 Employer contributions and reimbursements.

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the division, on all taxable wages paid by an employer for insured work.

2. *Contribution rates based on benefit experience.*

a. (1) The division shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, but shall be charged to the account of the next succeeding employer with whom the individual requalified for benefits as determined respectively under section 96.5, subsection 1, paragraph "g" and section 96.5, subsection 2, paragraph "a". However, the succeeding employer's account shall first be charged with benefits paid to the individual due to wage credits earned by the individual while employed by the succeeding employer. After exhausting those wage credits, the succeeding employer's account shall not be charged with ten weeks of benefits paid to the individual due to wage credits earned by the individual from a previous employer, but rather the unemployment

compensation fund shall be charged. After exhausting the ten weeks of noncharging, the succeeding employer's account shall again be charged with the benefits paid.

An employer's account shall not be charged with benefits paid to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work, but shall be charged to the account of the next succeeding employer with whom the individual requalified for benefits as determined under section 96.5, subsection 3.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

(3) The amount of regular benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based on employment with the employer during that quarter. The amount of extended benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed an additional fifty percent of the amount of the individual's wage credits based on employment with the employer during that quarter. However, the amount of extended benefits charged against the account of a governmental entity which is either a reimbursable or contributory employer, for a calendar quarter of the base period shall not exceed an additional one hundred percent of the amount of the individual's wage credits based on employment with the governmental entity during that quarter.

(4) The division shall adopt rules prescribing the manner in which benefits shall be charged against the accounts of several employers for which an individual performed employment during the same calendar quarter.

(5) This chapter shall not be construed to grant an employer or an individual in the employer's service, prior claim or right to the amount paid by the employer into the unemployment compensation fund either on the employer's own behalf or on behalf of the individual.

(6) Within forty days after the close of each calendar quarter, the division shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the division for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to a hearing officer for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

b. If an enterprise or business, or a clearly segregable and identifiable part of an enterprise or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 5, paragraph "b", continues to operate the enterprise or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the enterprise or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and con-

tribution rates which are attributable to that part of the enterprise or business transferred, unless the successor employer applies to the division within sixty days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the division.

The contribution rate to be assigned to the successor employer for the period beginning not earlier than the date of the succession and ending not later than the beginning of the next following rate year, shall be the contribution rate of the predecessor employer with respect to the period immediately preceding the date of the succession, provided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the division shall assign the successor employer a rate for the remainder of the rate year by combining the experience of the predecessor employers. If the successor employer is a subject employer prior to the succession, the successor employer may elect to retain the employer's own rate for the remainder of the rate year, or the successor employer may apply to the division to have the employer's rate redetermined by combining the employer's experience with the experience of the predecessor employer or employers. However, if the successor employer is a subject employer prior to the succession and has had a partial transfer of the experience of the predecessor employer or employers approved, then the division shall recompute the successor employer's rate for the remainder of the rate year.

c. (1) A nonconstruction contributory employer newly subject to this chapter shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than one percent until the end of the calendar year in which the employer's account has been chargeable with benefits for twenty consecutive calendar quarters immediately preceding the computation date.

(2) A construction contributory employer, as defined under rules adopted by the division, which is newly subject to this chapter shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters immediately preceding the computation date.

(3) Thereafter, the employer's contribution rate shall be determined in accordance with paragraph "d", except that the employer's average annual taxable payroll and benefit ratio may be computed, as determined by the division, for less than five periods of four consecutive calendar quarters immediately preceding the computation date.

d. The division shall determine the contribution rate table to be in effect for the rate year following the computation date, by determining the ratio of the current reserve fund ratio to the highest benefit cost ratio on the computation date. On or before the fifth day of September the division shall make available to employers the contribution rate table to be in effect for the next rate year.

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date.

(2) The highest benefit cost ratio is the highest of the resulting ratios computed by dividing the total benefits paid, excluding reimbursable benefits paid, during each consecutive twelve-month period, during the ten-year period ending on the computation date, by the total wages, excluding reimbursable employment wages, paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period.

If the current reserve fund ratio, divided by the highest benefit cost ratio:

Equals or exceeds	But is less than	The contribution rate table in effect shall be
—	0.3	1
0.3	0.5	2
0.5	0.7	3
0.7	0.85	4
0.85	1.0	5
1.0	1.15	6
1.15	1.30	7
1.30	—	8

“Benefit ratio” means a number computed to six decimal places on July 1 of each year obtained by dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer’s average annual taxable payroll.

Each employer qualified for an experience rating shall be assigned a contribution rate for each rate year that corresponds to the employer’s benefit ratio rank in the contribution rate table effective for the rate year from the following contribution rate tables. Each employer’s benefit ratio rank shall be computed by listing all the employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio and grouping the employers so listed into twenty-one separate ranks containing as nearly as possible four and seventy-six hundredths percent of the total taxable wages, excluding reimbursable employment wages, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. If an employer’s taxable wages qualify the employer for two separate benefit ratio ranks the employer shall be afforded the benefit ratio rank assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same benefit ratio rank.

Notwithstanding any other provision of this chapter which assigns an employer a contribution rate which corresponds to the employer’s benefit ratio rank in the contribution rate table, an employer qualified for an experience rating shall contribute at the rate specified in the twenty-first benefit ratio rank for the next calendar year if the following two conditions are met: as of the computation date the total benefits paid by the employer during the five periods of four consecutive calendar quarters immediately preceding the computation date exceed the contributions paid by the employer for that same period; and for the previous computation date the total benefits paid by the employer during the five periods of four consecutive calendar quarters immediately preceding that previous computation date exceeded the total contributions paid by the employer for that same period.

Benefit Ratio Rank	Approximate Cumulative Taxable Pay- roll Limit	Contribution Rate Tables							
		1	2	3	4	5	6	7	8
1	4.8%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	9.5%	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	14.3%	0.4	0.2	0.1	0.1	0.0	0.0	0.0	0.0
4	19.0%	0.7	0.4	0.3	0.2	0.1	0.0	0.0	0.0
5	23.8%	1.0	0.6	0.5	0.3	0.2	0.1	0.0	0.0
6	28.6%	1.3	0.8	0.7	0.4	0.3	0.2	0.1	0.0
7	33.3%	1.6	1.1	0.9	0.6	0.4	0.3	0.2	0.1
8	38.1%	1.9	1.4	1.1	0.8	0.5	0.4	0.3	0.2
9	42.8%	2.2	1.7	1.3	1.0	0.6	0.5	0.4	0.3
10	47.6%	2.5	2.0	1.5	1.2	0.7	0.6	0.5	0.4
11	52.4%	2.8	2.4	1.8	1.4	0.8	0.7	0.6	0.5
12	57.1%	3.1	2.8	2.1	1.6	0.9	0.8	0.7	0.6
13	61.9%	3.6	3.2	2.4	1.8	1.1	0.9	0.8	0.7
14	66.6%	4.1	3.6	2.9	2.2	1.4	1.0	0.9	0.8
15	71.4%	4.7	4.2	3.4	2.6	1.8	1.1	1.0	0.9
16	76.2%	5.4	4.8	4.2	3.3	2.5	1.6	1.1	1.0
17	80.9%	6.1	5.4	5.4	4.3	3.5	2.4	1.6	1.1
18	85.7%	7.0	6.7	6.3	5.4	5.4	3.9	2.5	1.3
19	90.4%	8.0	8.0	7.3	6.6	6.0	5.4	3.9	2.3
20	95.2%	8.5	8.5	8.5	7.8	7.2	6.4	5.4	3.8
21	100.0%	9.0	9.0	9.0	9.0	8.4	7.4	6.4	5.4

e. The division shall fix the contribution rate for each employer and notify the employer of the rate. An employer may appeal to the division for a revision of the contribution rate within thirty days from the date of the notice to the employer. After providing an opportunity for a hearing, the division may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The division shall notify the employer of its decision by regular mail. Judicial review of action of the division may be sought pursuant to chapter 17A.

If an employer's account has been charged with benefits as the result of a decision allowing benefits and the decision is reversed, the employer may appeal, within thirty days from the date of the next contribution rate notice, for a recomputation of the rate. If a base period employer's account has been charged with benefits paid to an employee at a time when the employee was employed by the base period employer in the same employment as in the base period, the employer may appeal, within thirty days from the date of the first notice of the employer's contribution rate which is based on the charges, for a recomputation of the rate.

f. If an employer has not filed a contribution and payroll quarterly report, as required pursuant to section 96.11, subsection 7, for a calendar quarter which precedes the computation date and upon which the employer's rate of contribution is computed, the employer's average annual taxable payroll shall be computed by considering the delinquent quarterly reports as containing zero taxable wages.

If a delinquent quarterly report is received by September 30 following the computation date the contribution rate shall be recomputed by using the taxable wages in all the appropriate quarterly reports on file to determine the average annual taxable payroll.

If a delinquent quarterly report is received after September 30 following the computation date the contribution rate shall not be recomputed, unless the rate is appealed in writing to the division under paragraph "e" and the delinquent quarterly report is also submitted not later than thirty days after the division notifies the employer of the rate under paragraph "e".

3. *Determination and assessment of contributions.*

a. As soon as practicable and in any event within two years after an employer has filed reports, as required pursuant to section 96.11, subsection 7, the division shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the division shall be the contributions payable. If the contributions found due are greater than the amount paid, the division shall send a notice by certified mail to the employer with respect to the additional contributions and interest assessed. A lien shall attach as provided in section 96.14, subsection 3, if the assessment is not paid or appealed within thirty days of the date of the notice of assessment.

b. If the division discovers from the examination of the reports required pursuant to section 96.11, subsection 7 or in some other manner that wages, or any portion of wages, payable for employment, have not been listed in the reports, or that reports were not filed when due, or that reports have been filed showing contributions due but contributions in fact have not been paid, the division shall at any time within five years after the time the reports were due, determine the correct amount of contributions payable, together with interest and any applicable penalty as provided in this chapter. The division shall send a notice by certified mail to the employer of the amount assessed and a lien shall attach as provided in paragraph "a".

c. The certificate of the division to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished as required under the provisions of this chapter, is prima facie evidence of the failure to pay contributions, file reports, or furnish information.

4. *Employer liability determination.* The division shall initially determine all questions relating to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship. A copy of the initial determination shall be sent by regular mail to the last address, according to the records of the division, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the division from the initial determination. An appeal shall not be entertained for any reason by the division unless the appeal is filed with the division within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.

A hearing on an appeal shall be conducted according to rules adopted by the division. A copy of the decision of the hearing officer shall be sent by regular mail to the last address, according to the records of the division, of each affected employing unit or employer.

The division's decision on the appeal shall be final and conclusive as to the liability of the employing unit or employer unless the employing unit or employer files an appeal for judicial review within thirty days after the date of mailing of the decision as provided in subsection 5.

5. *Judicial review.* Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of the county in which the employer resides, or in which the employer's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in a county in which the wages payable for employment were earned or paid or in Polk county, within thirty days after the date of the notice to the employer of the division's final determination as provided for in subsection 2, 3, or 4.

The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, with any penalty to be fixed and approved by the clerk. The bond shall not be less than fifty dollars and shall be conditioned on the petitioner's performance of the orders of the court. In all other respects, the judicial review shall be in accordance with chapter 17A.

6. *Jeopardy assessments.* If the division believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the division may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with interest and applicable penalty, and demand payment from the employer. If the payment is not made, the division may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The division shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions due is determined. The bond shall be in an amount deemed necessary, but not more than double the amount of the contributions involved, with securities satisfactory to the division.

7. *Financing benefits paid to employees of governmental entities.*

a. A governmental entity which is an employer under this chapter shall pay benefits in a manner provided for a reimbursable employer unless the governmental entity elects to make contributions as a contributory employer. The election shall be effective for a minimum of one calendar year and may be changed if an election is made to become a reimbursable employer prior to December 1 for a minimum of the following calendar year.

However, if on the effective date of the election the governmental entity has a negative balance in its contributory account, the governmental entity shall pay to the fund within a time period determined by the division the amount of the negative balance and shall immediately become liable to reimburse the unemployment compensation fund for benefits paid in lieu of contributions. Regular or extended benefits paid after the effective date of the election, including those based on wages paid while the governmental entity was a contributory employer, shall be billed to the governmental entity as a reimbursable employer.

b. A governmental entity electing to make contributions as a contributory employer, with at least eight consecutive calendar quarters immediately preceding the computation date throughout which the employer's account has been chargeable with benefits, shall be assigned a contribution rate under this paragraph. Contribution rates shall be assigned by listing all governmental contributory employers by decreasing percentages of excess from the highest positive percentage of excess to the highest negative percentage of excess. The employers so listed shall be grouped into seven separate percentage of excess ranks each containing as nearly as possible one-seventh of the total taxable wages of governmental entities eligible to be assigned a rate under this paragraph.

As used in this subsection, "*percentage of excess*" means a number computed to six decimal places on July 1 of each year obtained by dividing the excess of all contributions attributable to an employer over the sum of all benefits charged to an employer by the employer's average annual payroll. An employer's percentage of excess is a positive number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date exceeds the total benefits charged to such account for the same period. An employer's percentage of excess is a negative number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date is less than the total benefits charged to such account for the same period.

As used in this subsection, "*average annual taxable payroll*" means the average of the total amount of taxable wages paid by an employer for insured work during the three periods of four consecutive calendar quarters immediately preceding the computation date. However, for an employer which qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the computation date, "*average annual taxable payroll*" means the average of the employer's total amount of

taxable wages for the two periods of four consecutive calendar quarters immediately preceding the computation date.

The division shall annually calculate a base rate for each calendar year. The base rate is equal to the sum of the benefits charged to governmental contributory employers in the calendar year immediately preceding the computation date plus or minus the difference between the total benefits and contributions paid by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset benefits paid in any calendar year where total benefits exceed total contributions of governmental contributory employers. The contribution rate as a percentage of taxable wages of the employer shall be assigned as follows:

If the percentage of excess rank is:	The contribution rate shall be:	Approximate cumulative taxable payroll:
1	Base Rate - 0.9	14.3
2	Base Rate - 0.6	28.6
3	Base Rate - 0.3	42.9
4	Base Rate	57.2
5	Base Rate + 0.3	71.5
6	Base Rate + 0.6	85.8
7	Base Rate + 0.9	100.0

If a governmental contributory employer is grouped into two separate percentage of excess ranks, the employer shall be assigned the lower contribution rate of the two percentage of excess ranks. Notwithstanding the provisions of this paragraph, a governmental contributory employer shall not be assigned a contribution rate less than one-tenth of one percent of taxable wages unless the employer has a positive percentage of excess greater than five percent.

Governmental entities electing to be contributory employers which are not eligible to be assigned a contribution rate under this paragraph shall be assigned the base rate as a contribution rate for the calendar year.

c. For the purposes of this subsection, "*governmental reimbursable employer*" means an employer which makes payments to the division for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the division shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

d. A state agency, board, commission, or department, except a state board of regents' institution, shall, after approval of the billing for a governmental reimbursable employer as provided in subsection 8, paragraph "b", submit the billing to the director of revenue and finance. The director of revenue and finance shall pay the approved billing out of any funds in the state treasury not otherwise appropriated. A state agency, board, commission, or department shall reimburse the director of revenue and finance out of any revolving, special, trust, or federal fund from which all or a portion of the billing can be paid, for payments made by the director of revenue and finance on behalf of the agency, board, commission, or department.

e. If an enterprise or business of a reimbursable government entity is sold or otherwise transferred to a subsequent employing unit and the successor employ-

ing unit continues to operate the enterprise or business, the successor employing unit shall assume the position of the reimbursable government entity with respect to the reimbursable government entity's payroll and reimbursable benefits to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the successor employer elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's payroll prior to the sale or transfer of the enterprise or business.

f. If a reimbursable instrumentality of the state or of a political subdivision is discontinued other than by sale or transfer to a subsequent employing unit as described in paragraph "e", the state or the political subdivision, respectively, shall reimburse the division of job service for benefits paid to former employees of the instrumentality after the instrumentality is discontinued.

8. *Financing benefits paid to employees of nonprofit organizations.*

a. A nonprofit organization which is, or becomes, subject to this chapter, shall pay contributions under subsections 1 and 2, unless the nonprofit organization elects, in accordance with this paragraph, to reimburse the unemployment compensation fund for benefits paid in an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, which are based on wages paid for service in the employ of the nonprofit organization during the effective period of the election.

(1) A nonprofit organization may elect to become a reimbursable employer for a period of not less than two calendar years by filing with the division a written notice of its election not later than thirty days prior to the beginning of the calendar year for which the election is to be effective.

(2) A nonprofit organization which makes an election in accordance with subparagraph (1) shall continue to be a reimbursable employer until the nonprofit organization files with the division a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is to be effective.

(3) The division may for good cause extend the period within which a notice of election or termination of election must be filed and may permit an election or termination of election to be retroactive.

(4) The division, in accordance with rules, shall notify each nonprofit organization of any determination made by the division of the status of the nonprofit organization as an employer and of the effective date of any election or termination of election. A determination is subject to appeal and review in accordance with subsections 4 and 5.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, the division shall bill each nonprofit organization which has elected to reimburse the unemployment compensation fund for benefits paid in an amount equal to the full amount of regular benefits and one-half of the amount of extended benefits paid during the quarter which are based on wages paid for service in the employ of the organization. Benefits paid to an individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter.

(2) The nonprofit organization shall pay the bill not later than thirty days after the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, unless the nonprofit organization has filed an application for redetermination in accordance with subparagraph (4).

(3) Reimbursements made by a nonprofit organization shall not be deducted, in whole or in part, from the wages of individuals in the employ of the nonprofit organization.

(4) The amount due specified in a bill from the division is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the division setting forth the grounds for the application. The division shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

(6) If an enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the successor employing unit continues to operate the enterprise or business, the successor employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's payroll and reimbursable benefits to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the successor employer elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the employer's payroll prior to the sale or transfer of the enterprise or business.

9. *Bond or other security deposits.* A nonprofit organization which elects, on or after July 1, 1975, to become a reimbursable employer shall be required within thirty days after the effective date of the election to either execute and file with the division a surety bond approved by the division or deposit with the division money or securities.

a. The amount of the bond or deposit shall be equal to two and seven-tenths percent of the nonprofit organization's total taxable wages paid for employment during the four calendar quarters immediately preceding the effective date of the election, or the renewal date of a bond or a deposit of money or securities, whichever date is most recent and applicable. If the nonprofit organization did not pay wages in each of the four calendar quarters, the amount of the bond or deposit shall be determined by the division.

b. A bond filed under this subsection shall be in force for a period of not less than two years and shall be renewed with the approval of the division, at such times as the division may prescribe, but not less frequently than at two-year intervals. The division shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased or decreased, the adjusted bond shall be filed by the nonprofit organization within thirty days of the date notice of the required adjustment was mailed or otherwise delivered. Failure by a nonprofit organization covered by a bond to fully reimburse the unemployment compensation fund for benefits paid when due, shall render the surety liable for the due and unpaid reimbursements and any interest and penalty due as provided in section 96.14 to the extent of the bond.

c. Money or securities deposited in accordance with this subsection shall be retained by the division in an escrow account until the nonprofit organization's liability under the election is terminated, at which time the money or securities shall be returned to the nonprofit organization, less any deductions made by the division. The division may make deductions from the money deposited or sell the securities deposited if necessary to satisfy any due and unpaid reimbursements and any interest and penalty due as provided in section 96.14. The division may, at any time, review the adequacy of the deposit made by a nonprofit organization. If the division determines that an adjustment is necessary, the division shall require the organization to make an additional deposit within thirty days of written notice of the determination or shall return to the nonprofit organization

the portion of the deposit no longer considered necessary. Disposition of income from securities held in escrow or any cash remaining from the sale of securities shall be governed by the applicable provisions of the Code.

d. If a nonprofit organization fails to file a bond or make a deposit, or to file a bond or make a deposit to meet an adjustment, the division may terminate the nonprofit organization's election to reimburse the unemployment compensation fund for benefits paid in lieu of making contributions. The termination shall continue for not less than four consecutive calendar quarters beginning with the quarter in which the termination becomes effective. However, the division may extend for good cause the applicable filing, deposit, or adjustment period by not more than thirty days.

10. *Group accounts.* Two or more nonprofit organizations or two or more governmental entities which have become reimbursable employers in accordance with subsection 7 or subsection 8, paragraph "a", may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of the employers. The application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon approval of the application, the division shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the division receives the application and shall notify the group's agent of the effective date of the account. The account shall remain in effect for not less than one year until terminated at the discretion of the division or upon application by the group. Upon establishment of the account, each employer member of the group shall be liable for benefit reimbursements in lieu of contributions with respect to each calendar quarter in an amount which bears the same ratio to the total benefits paid in the quarter which are attributable to service performed in the employ of all members of the group, as the total wages paid for service performed in the employ of the member in the quarter bear to the total wages paid for service performed in the employ of all members of the group in the quarter. The division shall adopt rules with respect to applications for establishment, maintenance, and termination of group accounts, for addition of new members to, and withdrawal of active members from group accounts, and for the determination of the amounts which are payable by members of the group and the time and manner of the payments.

11. *Temporary emergency surcharge.* If on the first day of the third month in any calendar quarter, the division has an outstanding balance of interest accrued on advance moneys received from the federal government for the payment of unemployment compensation benefits, or is projected to have an outstanding balance of accruing federal interest for that calendar quarter, the division shall collect a uniform temporary emergency surcharge for that calendar quarter, retroactive to the beginning of that calendar quarter. The surcharge shall be a percentage of employer contribution rates and shall be set at a uniform percentage, for all employers subject to the surcharge, necessary to pay the interest accrued on the moneys advanced to the division by the federal government, and to pay any additional federal interest which will accrue for the remainder of that calendar quarter. The surcharge shall apply to all employers except governmental entities, nonprofit organizations, and employers assigned a zero contribution rate. The division shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. The surcharge shall not affect the computation of regular contributions under this chapter.

A special fund to be known as the temporary emergency surcharge fund is created in the state treasury. The special fund is separate and distinct from the unemployment compensation fund. All contributions collected from the temporary emergency surcharge shall be deposited in the special fund. The special fund

shall be used only to pay interest accruing on advance moneys received from the federal government for the payment of unemployment compensation benefits. Interest earned upon moneys in the special fund shall be deposited in and credited to the special fund.

If the division determines on June 1 that no outstanding balance of interest due has accrued on advanced moneys received from the federal government for the payment of unemployment compensation benefits, and that no outstanding balance is projected to accrue for the remainder of the calendar year, the division shall notify the treasurer of state of its determination. The treasurer of state shall immediately transfer all moneys, including accrued interest, in the temporary emergency surcharge fund to the unemployment compensation fund for the payment of benefits.

12. *Administrative contribution surcharge—fund.*

a. An employer other than a governmental entity or a nonprofit organization, subject to this chapter, shall pay an administrative contribution surcharge equal in amount to one-tenth of one percent of federal taxable wages, as defined in section 96.19, subsection 20, paragraph "b". The division shall recompute the amount as a percentage of taxable wages, as defined in section 96.19, subsection 20, and shall add the percentage surcharge to the employer's contribution rate determined under this section. The division shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner.

b. A special fund to be known as the administrative contribution surcharge fund is created in the state treasury. The fund is separate and distinct from the unemployment compensation fund. All contributions collected from the administrative contribution surcharge shall be deposited in the fund. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

c. Moneys in the fund shall be used by the division only upon appropriation by the general assembly and only for personnel and nonpersonnel costs of rural and satellite job service offices in population centers of less than twenty thousand. After the end of a state fiscal year the treasurer of state shall promptly transfer all moneys in the fund which have not been appropriated or which have been appropriated but remain unencumbered or unobligated to the unemployment compensation fund.

d. This subsection is repealed July 1, 1990, and the repeal is applicable to contribution rates for calendar year 1991 and subsequent calendar years.

87 Acts, ch 111, §10, 11 SF 449; 87 Acts, ch 222, §4 SF 507

1987 amendments are effective July 1, 1987, applicable to contribution rates for calendar year 1988; rate table 3 applicable to calendar year 1988; amendments repealed effective July 1, 1988, applicable to contribution rates for calendar year 1989 and subsequent years; section reverts on July 1, 1988 to its content before amendment and is reenacted in that form; 87 Acts, ch 222, §9, 10 SF 507

See Code editor's note

Section amended

Subsection 7, NEW paragraphs e and f

Subsection 8, paragraph b, NEW subparagraph (6)

96.7B Expanding employment incentive. Repealed by 87 Acts, ch 222, §8. SF 507

Repeal effective July 1, 1987, applicable to contribution rates for calendar year 1988 and subsequent calendar years; 87 Acts, ch 222, §9 SF 507

96.9 Control, management, and use.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the division of job service exclusively for the purposes of this chapter. This fund shall consist of:

- a. All contributions collected under this chapter,
- b. Interest earned upon any moneys in the fund,

c. Any property or securities acquired through the use of moneys belonging to the fund,

d. All earnings of such property or securities, and

e. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42 USC § 501 to 503, 1103 to 1105, 1321 to 1324]. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the division of job service. The director of revenue and finance shall issue warrants upon the fund pursuant to the order of the division of job service and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

a. A clearing account.

b. An unemployment trust fund account.

c. A benefit account. All moneys payable to the unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the division, be forwarded to the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the director of revenue and finance under the direction of the division of job service. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of the treasurer's duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the moneys deposited with the secretary of the treasury of the United States shall be credited to the unemployment compensation fund.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the division of job service, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The division shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the division deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants drawn by the director of revenue and finance pursuant to the order of the division

of job service for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the director of revenue and finance for the payment of benefits and refunds shall bear the signature of the director of revenue and finance. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the division of job service, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this state during such thirty-five twelve-month periods.

b. Amounts credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth preceding such period.

c. Money requisitioned as provided herein for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall

not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commissioner, treasurer of state and governor, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the commissioner, treasurer of state and governor.

7. *Transfer to railroad account.* Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the Railroad Unemployment Insurance Act, an amount hereinafter referred to as the preliminary amount; and shall, prior to January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the commission and the railroad retirement board. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "a" of the Railroad Unemployment Insurance Act, and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" as the term "employer" is defined in section 1 "a" of the Railroad Unemployment Insurance Act pursuant to the provisions of this chapter during the period July 1, 1939, to December 31, 1939.

8. *Cancellation of warrants.* The director of revenue and finance, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the

director of revenue and finance at the discretion of and certification by the division of job service.

87 Acts, ch 222, §5 SF 507

1987 amendment is effective July 1, 1987, applicable to contribution rates for calendar year 1988; amendment repealed effective July 1, 1988, applicable to contribution rates for calendar year 1989 and subsequent years; section reverts on July 1, 1988, to its content before amendment and is reenacted in that form; 87 Acts, ch 222, §9, 10 SF 507

Subsection 2, unnumbered paragraph 2 amended

96.11 Duties, powers, rules—advisory council—privilege.

1. *Duties and powers of commissioner.* It shall be the duty of the commissioner to administer this chapter; and the commissioner shall have power and authority to adopt, amend, or rescind pursuant to chapter 17A such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the commissioner deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the commissioner shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the commissioner deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the commissioner believes that a change in contribution or benefits rates will become necessary to protect the solvency of the fund, the commissioner shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* Each employer shall post and maintain printed statements of all rules of the division of job service in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the division to each employer without cost to the employer.

3. *Publications.* The commissioner shall cause to be printed for distribution to the public the text of this chapter, the division of job service's general rules, its annual reports to the governor, and any other material the commissioner deems relevant and suitable and shall furnish the same to any person upon application therefor.

The department shall prepare and distribute to the public as labor force data, only that data adjusted according to the current population survey and other nonlabor force statistics which the department determines are of interest to the public.

4. *Bonds.* The commissioner may bond any employee handling moneys or signing checks.

5. *Advisory council.*

a. There is established a job service advisory council composed of nine members appointed by the governor subject to confirmation by the senate. Three members shall be appointed to represent employees; three members shall be appointed to represent employers; and three members shall be appointed to represent the general public. Not more than five members of the advisory council shall be members of the same political party. The members shall serve six-year staggered terms beginning and ending as provided in section 69.19. Members shall serve without compensation, but shall be reimbursed for actual and necessary expenses, including travel, incurred for official meetings of the advisory council from funds appropriated to the division of job service.

Vacancies shall be filled for the unexpired term in the same manner as the original appointment was made.

b. The advisory council shall meet with the commissioner at least quarterly to discuss problems relating to the administration of this chapter and may meet more often upon the call of the commissioner.

The advisory council annually shall elect a chairperson.

6. *Employment stabilization.* The commissioner with the advice and aid of the advisory council, and through the appropriate bureaus of the division, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

7. *Records and reports.*

a. Each employing unit shall keep true and accurate work records, containing such information as the division of job service may prescribe. Such records shall be open to inspection and be subject to being copied by the division or its authorized representatives at any reasonable time and as often as necessary. The commissioner or a duly authorized representative of the division may require from any employing unit any sworn or unsworn reports, with respect to persons employed by the employing unit, which the commissioner deems necessary for the effective administration of this chapter.

b. (1) The division shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determinations made by the division's representative under section 96.6, subsection 2 as to the benefit rights of an individual. The division shall not disclose or open this information for public inspection in a manner that reveals the identity of the individual or employing unit, except as provided in subparagraph (3) of this paragraph and paragraph "c" of this subsection.

(2) A report or statement, whether written or verbal, made by a person to the division or to a person administering this law is a privileged communication. A person is not liable for slander or libel on account of such a report or statement.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and initial determinations made by the division's representative under section 96.6, subsection 2 as to benefit rights of an individual shall not be used in any action or proceeding except in a contested case proceeding or judicial review under chapter 17A. However, the division shall make information, which is obtained from an employing unit or individual in the course of administering this chapter and which relates to the employment and wage history of the individual, available to a county attorney for the county attorney's use in the performance of duties under section 331.756, subsection 5. Information in the division's possession that may affect a claim for benefits or a change in an employer's rating account shall be made available to the affected parties or their legal representatives. The information may be used by the affected parties in a proceeding under this chapter to the extent necessary for the proper presentation or defense of a claim.

c. Subject to conditions as the division by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and initial determinations made by the division's representative under section 96.6, subsection 2 as to benefit rights of an individual may be made available to any of the following:

(1) An agency of this or any other state, or a federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

(2) The bureau of internal revenue of the United States department of the treasury.

(3) The Iowa department of revenue and finance.

(4) The social security administration of the United States department of health and human services.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed workers.

(6) Colleges, universities and public agencies of this state for use in connection with research of a public nature, provided the division does not reveal the identity of any individual or employing unit.

(7) An employee of the department of employment services, a member of the general assembly, or a member of the United States congress in connection with the employee's or member's official duties.

(8) A political subdivision, government entity, or nonprofit organization having an interest in the administration of job training programs established pursuant to the federal Job Training Partnership Act.

(9) A designated representative of a business or labor organization having in excess of one hundred members.

Information released by the division shall only be used for purposes consistent with the purposes of this chapter.

d. Upon request of an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either federal law or the law of this or another state, or which is charged with a duty or responsibility under any such program, and if that agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this section, then the division shall provide to the requesting agency, with respect to any named individual specified, any of the following information:

(1) Whether the individual is receiving, has received, or has made application for unemployment compensation under this chapter.

(2) The period, if any, for which unemployment compensation was payable and the weekly rate of compensation paid.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) Wage information. Paragraph "g" does not apply to information released under this paragraph.

e. The division may require an agency that is provided information under this section to reimburse the division for the costs of furnishing the information.

f. An employee of the division, a hearing officer, or a member of the appeal board who violates this section is guilty of a serious misdemeanor.

g. Information subject to the confidentiality of this section shall not be made available to any authorized agency prior to notification in writing to the individual involved, except in criminal investigations.

8. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative of the division of job service shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

9. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the division of job service, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the division or any member or duly authorized representative thereof to produce evidence if so ordered or to give testimony touching the matter

under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

10. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the division of job service, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

11. *State-federal co-operation.* In the administration of this chapter, the division of job service shall co-operate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the division shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The division shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The division may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The division may afford reasonable co-operation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the division shall pay the division such compensation therefor as the division determines to be fair and reasonable.

12. *Destruction of records.* The division of job service may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the division and are deemed by the commissioner and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the commissioner in consultation with the state

records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the division.

13. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the division of job service shall review all outstanding overpayments of benefit payments annually. The division may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision.

87 Acts, ch 66, §1 SF 420; 87 Acts, ch 111, §12 SF 449
 Subsection 3, unnumbered paragraph 2 amended
 Subsection 7, paragraph c, NEW subparagraphs (7), (8), and (9)

96.14 Priority—refunds.

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules of the division of job service shall pay to the division in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one percent for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of the employer's employees for any period in the manner and within the time required by this chapter and the rules of the division of job service or any employer who the commission finds has filed an insufficient report and fails to file a sufficient report within thirty days after a written request from the division to do so shall pay a penalty to the division.

The penalty shall become effective with the first day the report is delinquent or, where a report is insufficient, with the thirty-first day following the written request for a sufficient report.

Penalty for failing to file a sufficient report shall be in addition to any penalty incurred for a delinquent report where the delinquent report is also insufficient.

The amount of the penalty for delinquent and insufficient reports shall be computed based on total wages in the period for which the report was due and shall be computed as follows:

Days Delinquent or Insufficient	Penalty Rate
1-60	0.1%
61-120	0.2%
121-180	0.3%
181-240	0.4%
241 or over	0.5%

A penalty shall not be less than ten dollars for each delinquent report or each insufficient report not made sufficient within thirty days after a request to do so. Interest, penalties, and costs shall be collected by the division in the same manner as provided by this chapter for contributions.

If the division finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules of the division, with intent to defraud the division, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

The division may cancel any interest or penalties if it is shown to the satisfaction of the division that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules of the division.

3. *Lien of contributions—collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any

interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer. An assessment of the unpaid contributions, interest and penalty shall be applied as provided in section 96.7, subsection 4, paragraphs "a" and "b" and the lien shall attach as of the date the assessment is mailed or personally served upon the employer. However, the division of job service may release any lien, when after diligent investigation and effort it determines that the amount due is not collectible.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the division shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in the recorder's office a book to be known as "index of unemployment contribution liens", so ruled as to show in appropriate columns the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name "State of Iowa" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall forthwith index said notice in said index book and shall forthwith record said lien in the manner provided for recording real estate mortgages, and the said lien shall be effective from the time of the indexing thereof.

The division shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of contributions as to which the division has filed notice with a county recorder, the division shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The division shall, substantially as provided in sections 445.6 and 445.7, proceed to collect all contributions as soon as practicable after the same become delinquent, except that no property of the employer shall be exempt from the payment of said contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the division and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the division shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The division may sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties,

interest and benefit overpayments. In any such case the commissioner, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

If a political subdivision or a political subdivision instrumentality becomes delinquent in the payment of contributions, any payments owed as a government employer, penalty, interest and costs for more than two calendar quarters, the amount of such delinquency shall be deducted from any further moneys due the employer by the state. Such deduction shall be made by the director of revenue and finance upon certification of the amount due. A copy of the certification will be mailed to the employer.

If an amount due from a governmental entity of this state remains due and unpaid for a period of one hundred twenty days after the due date, the commissioner shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of revenue and finance, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the commissioner from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the commissioner for the fund. However, the commissioner shall notify the delinquent entity of the commissioner's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 "a" of that Act [11 U.S.C., §104, "b", as amended].

5. *Refunds, compromises and settlements.* If the division of job service finds that an employer has paid contributions or interest on contributions, which have been erroneously paid or which have been paid solely due to benefits initially charged against but later removed from an employer's account, and the employer has filed an application for adjustment, the division shall make an adjustment, compromise, or settlement, and, at the employer's option, shall either refund the payments or treat the payments as voluntary contributions with no limitation on the payments' effects on the employer's contribution rate. Refunds so made shall be charged to the fund to which the collections have been credited, and shall be paid to the claimant without interest. A claim for refund shall be made within three years from the date of payment. For like cause, adjustments, compromises or refunds may be made by the division on its own initiative. If the division finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the division may institute a proceeding in the district court in the county in which the employer against which the tax is levied is located, requesting authority to compromise the contribution. Notice of the filing of an application shall be given to the interested parties as the court may prescribe. The court upon hearing may authorize the division to compromise and settle its claim for the contribution and shall fix the amount to

be received by the division in full settlement of the claim and shall authorize the release of the division's lien for the contribution.

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa and any resident employer for which such services are performed and who thereafter leaves the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice—form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that that part of said notice pertaining to the return day shall be in substantially the following form, to wit:

“And unless you appear thereto and defend in the district court of Iowa in and for county at the courthouse in, Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief prayed in plaintiff’s petition.”

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at the defendant’s last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident—form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

“To (Here insert the name of each defendant and the defendant’s residence or last known place of abode as definitely as known.)

“You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the day of, 19....., with the secretary of state of the state of Iowa.

“Dated at, Iowa, this day of, 19.....

.....
Plaintiff.

By
Attorney for Plaintiff.”

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals

of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the defendant reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is a defendant.

16. *Injunction upon nonpayment.* Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalty under the provisions of this chapter, after ten days' written notice sent by the division of job service to the employer's or employing unit's last known address by certified mail, may be enjoined from operating any business in the state while in violation of this chapter upon the complaint of the division in the district court of a county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice and without a bond being required from the division. Such injunction may enjoin any employer or employing unit from operating a business unit until the delinquent contributions, interest or penalties shall have been made and filed or paid; or the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court; or the employer has entered into a plan for the liquidation of such delinquencies as the court may approve, provided that such injunction may be reinstated upon the employer's failure to comply with the terms of said plan.

87 Acts, ch 115, §12 SF 374
Subsection 2, unnumbered paragraph 5 amended

96.19 Definitions.

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

1. *"Average annual taxable payroll"* means the average of the total amount of taxable wages paid by an employer for insured work during the five periods of four consecutive calendar quarters immediately preceding the computation date.

2. *"Benefits"* means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

3. *"Contributions"* means the money payments to the state unemployment compensation fund required by this chapter.

4. *"Employing unit"* means any individual or type of organization, including this state and its political subdivisions, state agencies, boards, commissions, and instrumentalities thereof, any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this

chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 5 or section 96.8, subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 5 or section 96.8, subsection 3, shall alone be liable for the contributions measured by wages payable to individuals in the contractor's or subcontractor's employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 5 or section 96.8, subsection 3, may recover the same from such contractor or subcontractor, except as any contractor or subcontractor who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general rules of the division of job service. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work, and provided, further, that such employment was for a total of not less than eight hours in any one calendar week.

5. "*Employer*" means:

a. For purposes of this chapter with respect to any calendar year after December 31, 1971, any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more excluding wages paid for domestic service or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual irrespective of whether the same individual was in employment in each such day. An employing unit treated as a domestic service employer shall not be treated as an employer with respect to wages paid for service other than domestic service unless such employing unit is treated as an employer under this paragraph or as an agricultural labor employer.

b. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this chapter, or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this chapter. Provided, that such other employing unit would have been an employer under paragraph "a" of this subsection, if such part had constituted its entire organization, trade, or business.

c. Any employing unit which acquired the organization, trade, or business, or substantially all the assets of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

d. Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, would be an employer under paragraph "a" of this subsection.

e. Any employing unit which, having become an employer under paragraph "a", "b", "c", "d", "f", "g", "h" or "i" has not, under section 96.8, ceased to be an employer subject to this chapter.

f. For the effective period of its election pursuant to section 96.8, subsection 3, any other employing unit which has elected to become fully subject to this chapter.

g. Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. 3301-3308), is required, pursuant to such Act, to be an "employer" under this chapter. Provided, however, that if an employer subject to contributions solely because of the terms of this subsection shall establish proper proof to the satisfaction of the department that the employer's employees have been and will be duly covered and insured under the unemployment compensation law of another jurisdiction such employer shall not be deemed an employer and such services shall not be deemed employment under this chapter.

h. After December 31, 1971, this state or a state instrumentality and after December 31, 1977, a government entity unless specifically excluded from the definition of employment.

i. Any employing unit for which service in employment, as defined in subsection 6, paragraph "a", subparagraph (5), is performed after December 31, 1971.

j. For purposes of paragraphs "a" and "i", employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into in accordance with subsection 6, paragraph "d", by the division of job service and an agency charged with the administration of any other state or federal unemployment compensation law.

k. For purposes of paragraphs "a" and "i", if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week.

l. An employing unit employing agricultural labor after December 31, 1977, if the employing unit:

(1) Paid during any calendar quarter in the calendar year or the preceding calendar year wages of twenty thousand dollars or more for agricultural labor, or

(2) Employed on each of some twenty days during the calendar year or during the preceding calendar year, each day being in a different calendar week, at least ten individuals in employment in agricultural labor for some portion of the day.

m. An employing unit employing after December 31, 1977, domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, and with respect to any calendar year, any employing unit who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars or more for such service.

6. "Employment".

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by:

(1) Any officer of a corporation. Provided that the term "employment" shall not include such officer if the officer is a majority stockholder and the officer shall not be considered an employee of the corporation unless such services are subject to a tax to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or

such services are required to be covered under this chapter of the Code, as a condition to receipt of a full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. §3301-3309), or

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, or

(3) Any individual other than an individual who is an employee under subparagraphs (1) or (2) who performs services for remuneration for any person as an agent driver or commission driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for the individual's principal; as a traveling or city salesperson, other than as an agent driver or commission driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the individual's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

Provided, that for purposes of paragraph "a", subparagraph (3), the term "employment" shall include services performed after December 31, 1971, only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) The services are not in the nature of single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(4) Service performed after December 31, 1971, by an individual in the employ of this state or any of its wholly owned instrumentalities and after December 31, 1977, service performed by an individual in the employ of a government entity unless specifically excluded from the definition of employment for a government entity.

(5) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization, but only if the service is excluded from "employment" as defined in the federal Unemployment Tax Act (26 U.S.C. §3301-3309) solely by reason of section 3306(c)(8) of that Act.

(6) For the purposes of subparagraphs (4) and (5), the term "employment" does not apply to service performed:

(a) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of that ministry or by a member of a religious order in the exercise of duties required by such order.

(c) In the employ of a nonpublic school which is not an institution of higher education prior to January 1, 1978.

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

(e) As part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(f) Prior to January 1, 1978 for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(g) In the employ of a governmental entity, if such service is performed by an individual in the exercise of the individual's duties as an elected official; as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; as a member of the state national guard or air national guard; as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or in a position which, pursuant to the state law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position which ordinarily does not require duties of more than eight hours per week.

(7) (a) A person in agricultural labor when such labor is performed for an employing unit which during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; or on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day ten or more individuals, excluding labor performed before January 1, 1980, by an alien referred to in this subparagraph; and such labor is not agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1184(c), 1101(a)(15)(H) (1976).

(b) For purposes of this subparagraph, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other employing unit shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and if such individual is not otherwise in employment as defined in this subsection.

For purposes of this subparagraph, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other employing unit and who is not treated as an employee of such crew leader as described above, such other employing unit and not the crew leader shall be treated as the employer of such individual; and such other employing unit shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader either on the crew leader's behalf or on behalf of such other employing unit for the agricultural labor performed for such other employing unit.

For purposes of this subsection, the term "crew leader" means an employing unit which furnishes individuals to perform agricultural labor for any other employing unit; pays, either on the crew leader's behalf or on behalf of such other employing unit, the individuals so furnished by the crew leader for the agricultural labor performed by them; and has not entered into a written agreement with such other employing unit under which such individual is designated as an employee of such other employing unit.

(8) A person performing after December 31, 1977 domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for an employing unit who paid cash remuneration of one thousand dollars or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year.

b. The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state, or

(2) The service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state, or

(3) The service is performed outside the United States, except in Canada, after December 31, 1971, by a citizen of the United States in the employ of an American employer, other than service which is deemed "employment" under the provisions of subparagraphs (1) and (2) or the parallel provisions of another state law, or service performed after December 31 of the year in which the United States secretary of labor approved the first time the unemployment compensation law submitted by the Virgin Islands, if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States but the employer is an individual who is a resident of this state, or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subdivisions (a) and (b) of this subparagraph is met, but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(d) An "American employer", for purposes of this subparagraph, means a person who is an individual who is a resident of the United States or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state.

(4) Notwithstanding the provisions of subparagraphs (1), (2), and (3), all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within and without the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state, and

(5) Notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which, as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act (26 U.S.C. §3301-3308), is required to be covered under this chapter.

c. Services performed within this state but not covered under paragraph "b" of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

d. Services not covered under paragraph "b" of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

e. Service shall be deemed to be localized within a state if:

- (1) The service is performed entirely within such state, or
- (2) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

f. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the division of job service that such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of service and in fact.

g. The term "employment" shall not include:

(1) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States; provided, however, that the general language just used shall not include any such instrumentality of the United States after Congress has, by appropriate legal action, expressly permitted the several states to require such instrumentalities to make payments into an employment fund under a state unemployment compensation law; and all such instrumentalities so released from the constitutional immunity to make the contributions, imposed by this chapter shall, thereafter, become subject to all the provisions of said chapter, and such provisions shall then be applicable to such instrumentalities and to all services performed for such instrumentalities in the same manner, to the same extent and on the same terms as are applicable to all other employers, employing units, individuals and services. Should the social security board, acting under section 1603 of the federal internal revenue code, fail to certify the state of Iowa for any particular calendar year, then the payments required of such instrumentalities with respect to such year shall be refunded by the division of job service from the fund in the same manner and within the same period as is provided for in section 96.14, subsection 5, which section provides for the refunding of contributions erroneously collected.

(2) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided, that the division is hereby authorized and directed to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 96.11, subsection 2 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this chapter.

(3) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" means any service performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, provided that after December 31, 1977, this subparagraph shall not exclude from employment agricultural labor specifically included as agricultural labor under the definition of employment in this subsection, but shall otherwise include remunerated service performed after December 31, 1971:

(a) On a farm in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or

clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended [46 Stat. 1550, Sec. 3, 12 U.S.C. 1141j], or in connection with ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one half of the commodity with respect to which such service is performed;

(ii) In the employ of a group of operators of farms (or a co-operative organization of which such operators are members) in the performance of service described in (i) of subdivision (d) of this subparagraph, but only if such operators produced more than one half of the commodity with respect to which such service is performed;

(iii) The provisions of (i) and (ii) of subdivision (d) of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(f) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) Domestic service in a private home prior to January 1, 1978, and after December 31, 1977, domestic service in a private home not covered as domestic service under the definition of employment.

(5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of eighteen in the employ of the child's father or mother.

(6) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.

Service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(7) Services performed by an individual, who is not treated as an employee, for a person who is not treated as an employer, under either of the following conditions:

(a) The services are performed by the individual as a salesperson and as a licensed real estate agent; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

(b) The services are performed by an individual engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis, for resale by the buyer or another person in the home or in a place other than a permanent retail establishment, or engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in a place other than a permanent retail establishment; substantially all of the remuneration for the services is directly related to sales or other output rather than to the number of hours worked; and the services are performed pursuant to a written contract between the individual and the person for whom the services are performed, which provides that the individual will not be treated as an employee with respect to the services for federal tax purposes.

7. "*Employment office*" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

8. "*Fund*" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

9. "*Total and partial unemployment*".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the division of job service, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

10. "*State*" includes, in addition to the states of the United States, the District of Columbia, Canada, Puerto Rico, and the Virgin Islands.

11. "*Unemployment compensation administration fund*" means the unemployment compensation administration fund established by this chapter, from which administration expenses under this chapter shall be paid.

12. "*Wages*" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the division of job service. Wages payable to an individual for insured work performed prior to January 1, 1941, shall, for the purposes of sections 96.3, 96.4,

and this section, be deemed to be wages paid within the calendar quarter with respect to which such wages were payable.

The term wages shall not include:

a. The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to or on behalf of an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for the employer's employees generally, or for the employer's employees generally and their dependents, or for a class, or classes of the employer's employees, or for a class or classes of the employer's employees and their dependents, on account of retirement, sickness, accident disability, medical or hospitalization expense in connection with sickness or accident disability, or death.

b. Any payment paid to an employee, including any amount paid by any employer for insurance or annuities or into a fund to provide for any such payment, on account of retirement.

c. Any payment on account of sickness or accident disability, or medical or hospitalization expense in connection with sickness or accident disability made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

d. Remuneration for agricultural labor paid in any medium other than cash.

13. "*Week*" means such period or periods of seven consecutive calendar days ending at midnight, or as the division of job service may by regulations prescribe.

14. "*Weekly benefit amount*". An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for one week of total unemployment. An individual's weekly benefit amount, as determined for the first week of the individual's benefit year, shall constitute the individual's weekly benefit amount throughout such benefit year.

15. "*Benefit year*". The term "benefit year" means a period of one year beginning with the day with respect to which an individual filed a valid claim for benefits. Any claim for benefits made in accordance with section 96.6, subsection 1, shall be deemed to be a valid claim for the purposes of this subsection if the individual has been paid wages for insured work required under the provisions of this chapter.

16. "*Base period*" means the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim.

17. "*Calendar quarter*" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the division of job service may by regulation prescribe.

18. "*Customary self-employment*". An employee shall be deemed to be engaged in "the employee's customary self-employment", as said words are used in section 96.5, during the periods in which the employee customarily devotes the major portion of the employee's working time and efforts: (a) To the employee's individual enterprises and interests; or (b) to the employee's household duties; or (c) to attending classes and preparing the employee's studies for any school or college.

19. "*Insured work*" means employment for employers.

20. "*Taxable wages*" means an amount of wages upon which an employer is required to contribute based upon wages which have been paid during a calendar year to an individual by an employer or the employer's predecessor, in this state or another state which extends a like comity to this state, with respect to employment, upon which the employer is required to contribute, which equals the greater of the following:

a. Sixty-six and two-thirds percent of the statewide average weekly wage which was used during the previous calendar year to determine maximum weekly benefit amounts, multiplied by fifty-two and rounded to the next highest multiple of one hundred dollars.

b. That portion of wages subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

21. "*Computation date*". The computation date for contribution rates shall be July 1 of that calendar year preceding the calendar year with respect to which such rates are to be effective.

22. "*Hospital*" means an institution which has been licensed, certified, or approved by the department of inspections and appeals as a hospital.

23. "*Institution of higher education*" means an educational institution which admits as regular students individuals having a certificate of graduation from a high school, or the recognized equivalent of such certificate; is legally authorized in this state primarily to provide a program of education beyond high school; provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and is a public or other nonprofit institution.

24. "*United States*" for the purposes of this section includes the states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

25. "*Extended benefit period*" means a period which begins with the third week after a week for which there is a state "on" indicator, and ends with either of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state "off" indicator.

b. The thirteenth consecutive week of such period.

However, an extended benefit period shall not begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

26. Repealed by 82 Acts, ch 1030, §4, and reserved.

27. Repealed by 82 Acts, ch 1030, §4, and reserved.

28. There is a state "on" indicator for a week if the rate of insured unemployment under the state law for the period consisting of the week and the immediately preceding twelve weeks equaled or exceeded five percent and equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the two preceding calendar years.

29. There is a state "off" indicator for a week if, for the period consisting of the week and the immediately preceding twelve weeks, the rate of insured unemployment under the state law was less than five percent, or less than one hundred twenty percent of the average of the rates for thirteen weeks ending in each of the two preceding calendar years, except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

30. "*Rate of insured unemployment*", for purposes of determining state "on" indicator and state "off" indicator, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in Iowa for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the division of job service on the basis of its reports to the United States secretary of labor, by the average monthly insured employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

31. "*Regular benefits*" means benefits payable to an individual under this or under any other state law (including benefits payable to federal civilian employees and to former armed forces personnel pursuant to 5 U.S.C., chapter 85) other than extended benefits.

32. "*Extended benefits*" means benefits (including benefits payable to federal civilian employees and to former armed forces personnel pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period.

33. "*Eligibility period*" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

34. "*Exhaustee*" means an individual who, with respect to any week of unemployment in the individual's eligibility period has received, prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and former armed forces personnel under 5 U.S.C., chapter 85) in the individual's current benefit year that includes such weeks. Provided that for the purposes of this subsection an individual shall be deemed to have received all of the regular benefits that were available to the individual, although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year the individual may subsequently be determined to be entitled to add regular benefits, or:

a. The individual's benefit year having expired prior to such week, has no, or insufficient, wages and on the basis of which the individual could establish a new benefit year that would include such week, and

b. The individual has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States secretary of labor, and the individual has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

35. "*State law*" means the unemployment insurance law of any state, approved by the United States secretary of labor under 26 U.S.C. 3304.

36. "*Domestic service*" includes service for an employing unit in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

37. "*Educational institution*" means one in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher. It is approved, licensed or issued a permit to operate as a school by the department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The course of study or training which it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

38. "*Governmental entity*" means a state, a state instrumentality, a political subdivision or an instrumentality of a political subdivision, or a combination of one or more of the preceding.

39. "*Department*" means the department of employment services created in section 84A.1.

40. "Commissioner" means the job service commissioner of the division of job service of the department of employment services appointed pursuant to section 96.10.

41. "Appeal board" means the employment appeal board created under section 10A.601.

42. "Statewide average weekly wage" means the amount computed by the division at least once a year on the basis of the aggregate amount of wages reported by employers in the preceding twelve-month period ending on December 31 and divided by the product of fifty-two times the average mid-month employment reported by employers for the same twelve-month period. In determining the aggregate amount of wages paid statewide, the division shall disregard any limitation on the amount of wages subject to contributions under this chapter.

43. "Nonprofit organization" means an organization described in the federal Internal Revenue Code, 26 U.S.C. §501(c)(3), which is exempt from income taxation under 26 U.S.C. §501(a).

44. "Division" means the division of job service of the department of employment services created in section 84A.1.

87 Acts, ch 222, §6, 7 SF 507

1987 amendments to subsections 1 and 38, and enactment of subsections 42-44 are effective July 1, 1987, applicable to contribution rates for calendar year 1988; amendments repealed effective July 1, 1988, applicable to calendar year 1989 and subsequent years; as to those amendments, section reverts July 1, 1988, to its content before amendment and is reenacted in that form; 1987 amendment to subsection 20 is effective July 1, 1987, applicable to contribution rates for calendar year 1988 and subsequent calendar years; 87 Acts, ch 222, §9, 10 SF 507

Subsections 1, 20 and 38 amended

NEW subsections 42, 43 and 44

CHAPTER 97B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

97B.41 Definitions.

When used in this chapter:

1. a. "Wages" means all remuneration for employment, including the cash value of remuneration paid in a medium other than cash, but not including the cash value of remuneration paid in a medium other than cash necessitated by the convenience of the employer. The amount agreed upon by the employer and employee for remuneration paid in a medium other than cash shall be reported to the department by the employer and is conclusive of the value of the remuneration. However, remuneration which does not equal or exceed the sum of three hundred dollars in a calendar quarter shall be excluded. "Wages" does not include special lump sum payments made as payment for sick leave or accrued vacation or payments made as an incentive for early retirement. Wages for an elected official means the salary received by an elected official, exclusive of expense and travel allowances.

Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances paid to a member of the general assembly. Wages includes per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly.

b. "Covered wages" means wages of a member during the periods of membership service as follows:

(1) For the period from July 4, 1953, through December 31, 1953, and each calendar year from January 1, 1954, through December 31, 1963, wages not in excess of four thousand dollars.

(2) For each calendar year from January 1, 1964, through December 31, 1967, wages not in excess of four thousand eight hundred dollars.

(3) For each calendar year from January 1, 1968, through December 31, 1970, wages not in excess of seven thousand dollars, for each calendar year from January 1, 1971 through December 31, 1972, wages not in excess of seven thousand eight hundred dollars, and for each calendar year from January 1, 1973 through December 31, 1975, wages not in excess of ten thousand eight hundred dollars.

(4) For each calendar year from January 1, 1976, through December 31, 1983, wages not in excess of twenty thousand dollars.

(5) For each calendar year from January 1, 1984 through December 31, 1985, wages not in excess of twenty-one thousand dollars per year.

(6) For the calendar year from January 1, 1986 through December 31, 1986, wages not in excess of twenty-two thousand dollars.

(7) For the calendar year from January 1, 1987 through December 31, 1987, wages not in excess of twenty-three thousand dollars.

(8) For each calendar year from January 1, 1988 and thereafter, except as provided in subparagraph (9), wages not in excess of twenty-four thousand dollars.

(9) For each calendar year thereafter, the department shall increase the covered wages limitation by one thousand dollars if the annual actuarial valuation of the assets and liabilities of the retirement system indicates that the cost of the increase in covered wages can be absorbed within the employer and employee contribution rates in effect under section 97B.11. However, covered wages shall not exceed forty thousand dollars for a calendar year.

(10) Effective July 1, 1978, covered wages shall not include wages to a member on or after the first of the month in which the member attains the age of seventy years, or after the effective date of the member's retirement unless the member is re-employed, as provided under section 97B.48, subsection 3.

(11) If a member is employed by more than one employer during a calendar year, the total amount of wages paid to the member by the several employers shall be included in determining the limitation on covered wages as provided in this paragraph. If the amount of wages paid to a member by the member's several employers during a calendar year exceeds the covered wage limit, the amount of such excess shall not be subject to the contributions required by section 97B.11.

2. "*Employment for any calendar quarter*" means any service performed under an employer-employee relationship under the provisions of this chapter if the remuneration equals or exceeds three hundred dollars in the calendar quarter. For the purposes of this chapter, elected officials are deemed to be in employment.

3. a. "*Employer*" means the state of Iowa, the counties, municipalities, and public school districts and all of the political subdivisions and all of their departments and instrumentalities, including joint planning commissions created under the provisions of chapter 473A.

If an interstate agency is established under chapter 28E and similar enabling legislation in an adjoining state, and a city had made contributions to the system for employees performing functions which are transferred to the interstate agency, the employees of the interstate agency who perform those functions shall be considered to be employees of the city for the sole purpose of membership in the system, although the employer contributions for those employees are made by the interstate agency.

b. "*Employee*" means any individual who is in employment defined in this chapter, except:

(1) Elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions, graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 331, division V, part 7. However, a county attorney is an employee

for purposes of this chapter whether that county attorney is employed on a full-time or a part-time basis.

(2) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa unless such members or employees shall make an application to the department to be covered under the provisions of this chapter. A member of the general assembly or temporary employee of the general assembly who made an application to the department to be covered under this chapter may terminate membership under this chapter by informing the department in writing of the member's or temporary employee's termination.

(3) Employees of drainage and levee districts not vested, unless such drainage and levee districts shall make an application to the department to be covered under the provisions of this chapter. However, any drainage or levee district which has made contributions against which no application for benefits has been made shall be entitled to withdraw all such contributions by making application to the department prior to December 31, 1969. Each drainage or levee district which withdraws its contributions shall refund to its employees contributions deducted from their wages.

(4) Employees hired for temporary employment of six months or less duration.

(5) Employees of community action programs, determined to be an instrumentality of the state or a political subdivision, unless such employees elect by filing an application with the department to be covered under the provisions of this chapter.

(6) Magistrates other than those who elect by filing an application with the department to be covered under this chapter.

(7) Persons employed under the federal Job Training Partnership Act of 1982, Pub. L. No. 97-300 unless these employees make an application to the department to be covered under this chapter.

(8) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(9) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty unless, within one year of commencing employment or no later than July 1, 1985 for individuals who are members of the system on July 1, 1984, a member makes an application to the department to be covered under this chapter.

(10) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in chapter 372 or chapter 420 unless such employees shall make an application to the department to be covered under the provisions of this chapter.

(11) Members of the state transportation commission, the board of parole, and the state health facilities council unless a member elects by filing an application with the department to be covered under this chapter.

(12) Employees of the Iowa dairy industry commission established under chapter 179, the Iowa beef cattle producers association established under chapter 181, the Iowa pork producers council established under chapter 183A, the Iowa turkey marketing council established under chapter 184A, the Iowa soybean promotion board established under chapter 185, the Iowa corn promotion board established under chapter 185C, and the Iowa egg council established under chapter 196A.

(13) Judicial hospitalization referees appointed under section 229.21.

4. "System" means the retirement plan as contained herein or as duly amended.

5. "Abolished system" means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53.

6. "Contributions" means the payments to the fund required herein, by the employer and by the members, to provide the benefits of the system.

7. "*Member*" means an employee or a former employee required to become a member of the system by sections 97B.42 and 97B.43.

8. "*Active member*" during a calendar year means a member who made contributions to the system at any time during the calendar year and who:

a. Had not received or applied for a refund of the member's accumulated contributions for withdrawal or death, and

b. Had not commenced receiving a retirement allowance.

9. "*Inactive member*" with respect to future service means a member who at the end of a year had not made any contributions during the current year and who has not received a refund of the member's accumulated contributions.

10. "*Vested member*" means a member who terminated employment in accordance with one of the following paragraphs:

a. Prior to July 1, 1965, after having attained the age of forty-eight and completed at least eight years of service.

b. Between July 1, 1965 and June 30, 1973, after having completed at least eight years of service.

c. On or after July 1, 1973, after having completed at least four years of service.

d. After having attained the age of fifty-five.

11. "*Retired member*" means a member who has applied for and commenced receiving the member's retirement allowance. A member has not established a bona fide retirement if the member accepts other employment as defined in this section before qualifying for at least one calendar month's retirement benefits under this chapter.

12. "*Accumulated contributions*" means the total obtained as of any date, by accumulating each individual contribution by the member at two percent interest plus interest dividends for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years at two percent interest plus the interest dividend rate calculated for the previous year, compounded annually, from the end of the calendar year in which such contribution was made to the first day of the month of such date.

13. "*Service*" means uninterrupted service under this chapter by an employee, except an elected official, from the date the employee last entered employment of the employer until the date the employee's employment shall be terminated by death, retirement, resignation or discharge; provided, however, the service of any employee shall not be deemed to be interrupted by:

a. Service in the armed forces of the United States during a period of war or national emergency, provided the employee was employed by the employer immediately prior to entry into such armed forces, and further provided the employee was released from such service and returns to employment with the employer within ninety days of the date on which the employee shall have the right of release from such service or within such longer period as may be provided by the laws of the United States applicable thereto.

b. Leave of absence or vacation authorized by the employer for a period not exceeding twelve months.

c. The termination at the end of the school year of the contract of employment of an employee in the public schools of the state of Iowa, provided the employee enters into a further contract of employment in the public schools of the state of Iowa for the next succeeding school year.

d. Temporary or seasonal interruptions in service such as service of school bus drivers, schoolteachers under regular contract, interim teachers or substitute teachers, instructors at Iowa State University of science and technology, the state University of Iowa, or University of Northern Iowa, employees in state schools or hospital dormitories, other positions when the temporary suspension of service

does not terminate the period of employment of the employee, or temporary employees of the general assembly.

14. "*Prior service*" means any service by an employee rendered at any time prior to July 4, 1953.

15. "*Years of prior service*" means the total of all periods of prior service of a member. In the determination of such total years of prior service any fraction of the total in excess of an integral number of years which is at least six months shall be deemed to be a complete year and any smaller fraction shall be disregarded.

16. "*Beneficiary*" means the person or persons entitled to receive any benefits at the death of a member payable under this chapter who has or have been designated in writing by the member and filed with the department, or if no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary shall be the estate of the member.

17. "*Membership service*" means service rendered by a member after July 4, 1953, and prior to the first of the month in which the member attains the age of seventy years. Years of membership service shall be counted to the complete quarter calendar year.

18. "*Actuarial equivalent*" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the department.

19. "*Three-year average covered wage*" means a member's covered wages averaged for the highest three years of the member's service. The highest three years of a member's covered wages shall be determined using calendar years. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, the department may determine the wages for the third year by combining the wages from the highest quarter or quarters not being used in the selection of the two highest years with the final quarter or quarters of the member's service to create a full year. If the three-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member's period of service, the three-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member's period of service.

20. "*Service*" for an elected official means the period of membership service for which contributions are made beginning on the date an elected official assumes office and ending on the expiration date of the last term the elected official serves, excluding all the intervening periods during which the elected official is not an elected official.

21. "*Inactive vested member*" means an inactive member who was a vested member at the time of termination of employment.

87 Acts, ch 115, §13 SF 374; 87 Acts, ch 227, §18 SF 504

Contributions for part-time county attorney before July 1, 1987; 87 Acts, ch 227, §23 SF 504

Subsection 3, paragraph b, subparagraphs 1 and 12 amended

97B.46 Service after age sixty-five.

1. A member who is an employee of the state and not an active member of any other retirement system in the state which is maintained in whole or in part by public contributions may remain in service beyond the date the member attains the age of sixty-five. The employee shall retire on the first day of the month after the last day of service. The employer shall not consider age as a factor in determining the continuation of the member's service.

2. A member who is not an employee of the state may remain in service beyond the date the member attains the age of sixty-five until attaining the age of seventy. After attaining the age of seventy, the member may remain in service for the periods as the employer approves and the member shall retire on the first day of the month following the last approved period. An employer who is not the state may adopt policies which prescribe retirement at age seventy or older.

3. A member shall not be employed as a peace officer or as a fire fighter after attaining the age of sixty-five.

4. Credit for service shall cease when contributions cease as provided by section 97B.11. A member remaining in service after attaining the age of seventy years is entitled to receive a retirement allowance under section 97B.49 as applicable commencing with payment for the calendar month within which the written notice is submitted to the department, except that if the member fails to submit the notice on a timely basis, retroactive payments shall be made for no more than six months immediately preceding the month in which the written notice is submitted.

87 Acts, ch 19, §5 SF 268

Section affirmed and reenacted effective April 17, 1987; legislative findings; 87 Acts, ch 19, §1, 6 SF 268

97B.49 Monthly payments of allowance.

Each member, upon retirement on or after the member's normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member's retirement.

1. For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this subsection and subsection 3 of this section as applicable, or the benefit determined under subsection 5 of this section. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member's average annual covered wages; but in no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member's accumulated contributions, the member's employer's accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

2. For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under the formula benefit of subsection 1 or subsection 5 of this section a monthly annuity for membership service shall be determined by applying the member's accumulated contributions and the employer's matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member's credit on or before December 31, 1966, to the annuity tables in use by the department according to the member's age.

3. For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, there shall be determined a benefit of eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member's total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member's prior service for which that total remuneration was the highest. An additional three-tenths of one percent of the remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the general fund of the state.

4. For each active member retiring on or after June 30, 1973, and who has completed ten or more years of membership service, the total amount of monthly benefit payable at the normal retirement date for prior service and membership

service shall not be less than fifty dollars per month. If benefits commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50. If an optional allowance is selected under section 97B.51, the amount payable shall be the actuarial equivalent of the minimum benefit. An employee who is in employment on a school year or academic year basis, will be considered to be an active member as of June 30, 1973, if the employee completes the 1972-1973 school year or academic year.

5. For each active member retiring on or after July 1, 1986, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to fifty percent of the three-year average covered wage multiplied by a fraction of years of service. For the purposes of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

If benefits under this subsection commence on an early retirement date, the amount of benefit shall be reduced in accordance with section 97B.50.

6. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December, 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. There is appropriated from the general fund of the state to the department of personnel from funds not otherwise appropriated an amount sufficient to fund the provisions of this subsection.

The benefit increases granted to members retired under the system on January 1, 1976 shall be granted only on January 1, 1976 and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

7. a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a conservation peace officer under section 107.13 and who retires on or after July 1, 1986, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive, in lieu of the receipt of any benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, with benefits payable during the member's lifetime.

b. A conservation peace officer who retires on or after July 1, 1986 and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer multiplied by a fraction of years of service as a conservation peace officer. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a conservation peace officer, divided by twenty-five years. On or after July 1, 1986, if the conservation peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the conservation peace officer's retirement precedes the date on which the conservation peace officer attains sixty years of age.

The annual contribution necessary to pay for the additional benefits provided in this paragraph, shall be paid by the employer and employee in the same proportion that employer and employee contributions are made under section 97B.11.

c. There is appropriated from the state fish and game protection fund to the department of personnel an actuarially-determined amount determined by the Iowa public employees' retirement system sufficient to pay for the additional benefits to conservation peace officers provided by this section, as a percentage, in paragraph "a" and for the employer portion of the benefits provided in paragraph "b". The amount is in addition to the contribution paid by the employer under section 97B.11. The cost of the benefits relating to conservation peace officers within the fish and game division of the department of natural resources shall be paid from the state fish and game protection fund and the cost of the benefits relating to the other conservation peace officers of the department shall be paid from the general fund.

8. a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a peace officer and who retires on or after July 1, 1986, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a peace officer, may elect to receive, in lieu of the benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer, with benefits payable during the member's lifetime.

A peace officer who retires on or after July 1, 1986 and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer multiplied by the fraction of years of service as a peace officer. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a peace officer, divided by twenty-five years. On or after July 1, 1984, if the peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the peace officer's retirement precedes the date on which the peace officer attains sixty years of age.

For the purpose of this subsection membership service as a peace officer means service under this system as any or all of the following:

- (1) As a county sheriff as defined in section 39.17.
- (2) As a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903.
- (3) As a marshal or police officer in a city not covered under chapter 400.

b. Each county and applicable city and employee eligible for benefits under this section shall annually contribute an amount determined by the department of personnel, as a percentage of covered wages, to be necessary to pay for the additional benefits provided by this section. The annual contribution in excess of the employer and employee contributions required by this chapter shall be paid by the employer and the employee in the same proportion that employer and employee contributions are made under section 97B.11. The additional percentage of covered wages shall be calculated separately by the department for service under paragraph "a", subparagraphs (1) and (2), and for service under paragraph "a", subparagraph (3), and each shall be an actuarially determined amount for that type of service which, if contributed throughout the entire period of active service, would be sufficient to provide the pension benefit provided in this section.

9. Effective July 1, 1978, for each member who retired from the system prior to January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1978 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, two dollars per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, three dollars per month for each complete year of service.

Effective July 1, 1979, the increases granted to members under this subsection shall be paid to contingent annuitants and to beneficiaries.

10. Notwithstanding sections of this chapter relating to eligibility for and determination of retirement benefits, a vested member who is or has been employed as a correctional officer by the Iowa department of corrections and who retires on or after July 1, 1986 and at the time of retirement is at least sixty years of age and has completed at least thirty years of membership service as a correctional officer, may elect to receive, in lieu of the receipt of benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a correctional officer, with benefits payable during the member's lifetime.

The Iowa department of corrections and the department of personnel shall jointly determine the applicable merit system job classifications of correctional officers.

The Iowa department of corrections shall pay to the department of personnel, from funds appropriated to the Iowa department of corrections, an actuarially-determined amount sufficient to pay for the additional benefits provided in this subsection. The amount is in addition to the employer contributions required in section 97B.11.

11. Effective July 1, 1980, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1980 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

However, effective July 1, 1980 the monthly retirement allowance attributable to membership service and prior service of a member, contingent annuitant and beneficiary shall not be less than five dollars times the number of complete years of service of the member, not to exceed thirty, reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52, compared to the full monthly retirement benefit provided in this section.

12. Effective beginning July 1, 1982, for each member who retired from the system prior to January 1, 1976, and for each member who retired from the system on or after January 1, 1976 under subsection 1 of this section, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1982 is increased as follows:

a. For the first ten years of service, fifty cents per month for each complete year of service.

b. For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

c. For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

d. The amount of monthly increase payable to a member under this subsection is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section.

13. a. Each member who retired from the system between January 1, 1976 and June 30, 1982, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1986 and the November 1987 monthly benefit payments a retirement dividend equal to fifty percent of the monthly benefit payment the member received for the preceding June. The retirement dividend does not affect the amount of a monthly benefit payment.

b. Each member who retired from the system between July 4, 1953 and December 31, 1975, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1986 and the November 1987 monthly benefit payments a retirement dividend equal to seventy-five percent of the monthly benefit payment the member received for the preceding June. The retirement dividend does not affect the amount of a monthly benefit payment.

c. Notwithstanding the determination of the amount of a retirement dividend under paragraph "a" or "b", a retirement dividend shall not be less than twenty-five dollars.

14. Notwithstanding other provisions of this chapter, a member who is or has been employed by the office of disaster services as an airport firefighter who retires on or after July 1, 1986, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as an airport firefighter, may elect to receive, in lieu of the receipt of any benefits under subsection 5 of this section, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport firefighter, with benefits payable during the member's lifetime.

An airport firefighter who retires on or after July 1, 1986 and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport firefighter multiplied by a fraction of years of service as an airport firefighter. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as an airport firefighter, divided by twenty-five years. On or after July 1, 1986, if the airport firefighter has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the airport firefighter's retirement precedes the date on which the airport firefighter attains sixty years of age.

The employer and each employee eligible for benefits under this subsection shall annually contribute an actuarially determined amount specified by the department, as a percentage of covered wages, that is necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required in section 97B.11 shall be paid by the employer and the employee in the same proportion that the employer and employee contributions are made under section 97B.11.

There is appropriated from the general fund of the state to the department from funds not otherwise appropriated an amount sufficient to pay the employer share of the cost of the additional benefits provided in this subsection.

87 Acts, ch 233, §223 SF 511
Subsection 7, paragraph c amended

97B.50 Early retirement.

1. Except as otherwise provided in this section, a member, upon retirement prior to the normal retirement date, is entitled to receive a monthly retirement

allowance determined in the same manner as provided for normal retirement in subsections 1, 4 and 5 of section 97B.49 reduced as follows:

a. For a member who is less than sixty-two years of age and has not completed thirty years of membership service, by five-tenths of one percent per month for each month that the member's early retirement date precedes the normal retirement date.

b. For a member who is at least sixty-two years of age and less than sixty-five years of age and who has not completed thirty years of membership service and prior service, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

2. A member who retires from the system due to disability and commences receiving disability benefits pursuant to the United States Social Security Act (42 U.S.C.), as amended to July 1, 1978, who is eligible for early retirement, but has not reached the normal retirement date, shall receive full benefits under section 97B.49 and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. This section takes effect July 1, 1987 for a member meeting the requirements of this subsection who retired from the system at any time between July 4, 1953 and June 30, 1987.

3. A member who is at least sixty-two years of age and less than sixty-five years of age who has completed thirty or more years of membership service and prior service shall receive full benefits under section 97B.49 determined as if the member had attained sixty-five years of age. For a member who is at least fifty-nine but less than sixty-two years of age who has completed at least thirty years of service, the monthly retirement allowance shall be reduced by twenty-five hundredths percent per month for each month that the member's retirement date precedes the member's sixty-second birthday. For a member who is at least fifty-five years of age and less than fifty-nine years of age who has completed thirty years of membership service, the monthly retirement allowance shall be reduced by five-tenths percent per month for each month that the member's retirement date precedes the member's normal retirement date.

87 Acts, ch 227, §19, 20 SF 504

Subsection 2 amended

Subsection 3 stricken and former subsection 4 renumbered as 3

97B.73A Part-time county attorneys.

A part-time county attorney may elect in writing to the department to make employee contributions to the system for the county attorney's previous service as a county attorney and receive credit for membership service in the system for the period of service as a part-time county attorney for which employee contributions are made. The contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.41, subsection 12, for that period of membership service. A member who elects to make contributions under this section shall notify the county board of supervisors of the member's election, and the county board of supervisors shall pay to the department the employer contributions that would have been contributed by the employer under section 97B.11 plus interest on the contributions that would have accrued if the county attorney had been a member of the system for that period of service.

87 Acts, ch 227, §21 SF 504

NEW section

CHAPTER 97C

FEDERAL SOCIAL SECURITY ENABLING ACT

97C.2 Definitions.

For the purposes of this chapter:

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

2. The term "employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under this chapter.

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

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

5. The term "state agency" means the department of personnel.

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

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

8. The term "Federal Insurance Contributions Act" means subchapter "A" of chapter 9 of the federal internal revenue code as such code has been and may from time to time be amended.

9. The term "Federal Security Administrator" means the administrator of the federal security agency (or the administrator's successor in function), and includes

any individual to whom the federal security administrator has delegated any of the administrator's functions under the Social Security Act, Title II, with respect to coverage under such Act of employees of states and their political subdivisions.

87 Acts, ch 227, §22 SF 504
Subsection 3 amended

CHAPTER 98

CIGARETTE AND TOBACCO TAXES

98.2 Sale or gift to certain minors prohibited.

A person shall not furnish to any minor under eighteen years of age by gift, sale, or otherwise, any smokeless tobacco, cigarette, or cigarette paper, or any paper or other substance made or prepared for the purpose of use in making of cigarettes. A person shall not directly or indirectly, or by an agent, sell, barter, or give to any minor under eighteen years of age any tobacco in any other form whatever except upon the written order of the minor's parent or guardian or the person in whose custody the minor is.

87 Acts, ch 83, §1 SF 222
Section amended

98.4 Minors required to give information. Repealed by 87 Acts, ch 83, §2, SF 222

98.5 Violation. Repealed by 87 Acts, ch 83, §2, SF 222

98.45 Licensees, duties.

1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least two years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all such invoices for one year from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for one year from the date of purchase. Invoices shall be

available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for one year from the date of delivery of the tobacco products.

5. The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

a. The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

b. Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 98.44, or tobacco products sold by such person to a retailer in this state.

Such report shall be made on forms provided by the director.

Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a simple misdemeanor.

87 Acts, ch 199, §1 HF 334
Subsection 1, unnumbered paragraph 2 amended

98.46 Distributors, monthly returns—interest, penalties.

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; and made, manufactured or fabricated in this state for sale in this state, during the preceding calendar month. Every licensed distributor outside this state shall in like manner file a return showing the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers, during the preceding calendar month. Returns shall be made upon forms furnished and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within two years after the return is filed or within two years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency.

2. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. The director in issuing an assessment shall add to the amount of tax found due and unpaid a penalty of seven and one-half percent of the tax if less than ninety percent of the tax has been paid, except as provided in section 421.27, except that, if the director finds that the taxpayer has made a false and fraudulent return with intent to evade the tax or failed to file a return with intent to evade the tax imposed by this division, the penalty shall be seventy-five percent of the entire tax as shown by the return as corrected. The penalty imposed under this subsection is not subject to waiver.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination and assessment by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within thirty days from the postmark date of the notice of determination of tax, penalty, and interest or refund owing. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 98.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain such other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.

87 Acts, ch 199, §2, 3 HF 334

Subsection 1 amended

Subsections 2, 3, 4, 5 and 6 stricken, subsections 2-4 rewritten, and former subsections 7 and 8 renumbered as 5 and 6

CHAPTER 98A

SMOKING PROHIBITIONS

98A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Smoking*" means the carrying of or control over a lighted cigar, cigarette, pipe, or other lighted smoking equipment.

2. "*Public place*" means any enclosed indoor area used by the general public or serving as a place of work, including, but not limited to, all retail stores, offices containing three hundred or more square feet of floor space, including waiting rooms of three hundred or more square feet of floor space, and other commercial establishments; public conveyances with departures, travel and destination entirely within this state; educational facilities; hospitals, clinics, nursing homes, and other health care and medical facilities; and auditoriums, elevators, theaters, libraries, art museums, concert halls, indoor arenas, and meeting rooms. "*Public place*" does not include a restaurant, a retail store at which fifty percent or more of the sales result from the sale of tobacco or tobacco products, the portion of a retail store where tobacco or tobacco products are sold, a private, enclosed office occupied exclusively by smokers even though the office may be visited by

nonsmokers, lobbies and malls which encompass floor space of three hundred or less square feet, a room used primarily as the residence of students or other persons at an educational facility, a sleeping room in a motel or hotel, or each resident's room in a health care facility. The person in custody or control of the facility shall provide a sufficient number of rooms in which smoking is not permitted to accommodate all persons who desire such rooms.

3. "Public meeting" means a gathering in person of the members of a governmental body, whether an open or a closed session under chapter 21.

4. "Bar" means an establishment or portion of an establishment where one can purchase and consume alcoholic beverages as defined in section 123.3, subsection 9, but excluding any establishment or portion of the establishment having table and seating facilities for serving of meals to more than fifty people at one time and where, in consideration of payment, meals are served at tables to the public.

87 Acts, ch 219, §1 HF 79
Section stricken and rewritten

98A.2 Prohibition.

1. A person shall not smoke in a public place or in a public meeting except in a designated smoking area. This prohibition does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place. This prohibition does not apply to factories, warehouses, and similar places of work not usually frequented by the general public, except that an employee cafeteria in such place of work shall have a designated nonsmoking area.

2. Smoking areas may be designated by persons having custody or control of public places, except in places in which smoking is prohibited by the fire marshal or by other law, ordinance, or regulation.

3. Where smoking areas are designated, existing physical barriers and existing ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. In the case of public places consisting of a single room, the provisions of this law shall be considered met if one side of the room is reserved and posted as a no-smoking area. No public place other than a bar shall be designated as a smoking area in its entirety. If a bar has within its premises a nonsmoking area, this designation shall be posted on all entrances normally used by the public.

If the public place is subject to any state inspection process or under contract with the state, the person performing the inspection shall check for compliance with the posting requirement.

4. Notwithstanding subsection 1 of this section, smoking is prohibited on elevators.

87 Acts, ch 219, §2 HF 79
Section stricken and rewritten

98A.3 Responsibilities of proprietors.

The person having custody or control of a public place or public meeting shall make reasonable efforts to prevent smoking in the public place or public meeting by posting appropriate signs indicating no-smoking or smoking areas and arranging seating accordingly.

87 Acts, ch 219, §3 HF 79
Section stricken and rewritten

98A.4 Areas posted.

A person having custody or control of a public place or public meeting shall cause signs to be posted within the appropriate areas of the facility advising patrons of smoking and no-smoking areas. In addition the statement "Smoking

prohibited except in designated areas" shall be conspicuously posted on all major entrances to the public place or public meeting.

87 Acts, ch 219, §4 HF 79
Section amended

98A.5 Enforcement of smoking prohibition. Repealed by 87 Acts, ch 219, §7. HF 79

98A.6 Civil penalty for violation.

A person who smokes in those areas prohibited in section 98A.2, or who violates section 98A.4, shall pay a civil fine pursuant to section 805.8, subsection 11 for each violation.

Judicial magistrates shall hear and determine violations of this chapter. The civil penalties paid pursuant to this chapter shall be deposited in the county treasury.

87 Acts, ch 219, §5 HF 79
Section amended

CHAPTER 99B

GAMES OF SKILL OR CHANCE, AND RAFFLES

99B.1 Definitions.

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

1. "*Game of skill*" means a game whereby the result is determined by the player directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle.

2. "*Game of chance*" means a game whereby the result is determined by chance and the player in order to win aligns objects or balls in a prescribed pattern or order or makes certain color patterns appear and specifically includes but is not limited to the game defined as bingo. Game of chance does not include a slot machine.

3. "*Raffle*" means a lottery in which each participant buys a ticket for a chance at a prize with the winner determined by a random method and the winner is not required to be present to win. "Raffle" does not include a slot machine.

4. "*Bingo*" means a game, whether known as bingo or any other name, in which each participant uses one or more cards each of which is marked off into spaces arranged in horizontal and vertical rows of spaces, with each space being designated by number, letter, or combination of numbers and letters, no two cards being identical, with the players covering spaces as the operator of the game announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the spaces, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of spaces on a card being used by the player or players. Each determination of a winner by the method described in the preceding sentence is a single bingo game at any bingo occasion.

5. "*Gross receipts*" means the total revenue received from the sale of rights to participate in a game of skill, game of chance, or raffle and admission fees or charges.

6. "*Net receipts*" means gross receipts less amounts awarded as prizes and less state and local sales tax paid upon the gross receipts. Reasonable expenses, charges, fees, taxes other than the state and local sales tax, and deductions allowed by the division shall not exceed thirty percent of net receipts.

7. "*Net rent*" means the total rental charge minus reasonable expenses, charges, fees and deductions allowed by the division.

8. "*Fair*" means an annual fair and exposition held by the Iowa state fair board and any fair held by a county or district fair or agricultural society under the provisions of chapter 174.

9. "*Authorized*" means approved as a concession by the Iowa state fair board or a county or district fair or agricultural society holding a fair.

10. "*Qualified organization*" means any licensed person who dedicates the net receipts of a game of skill, game of chance or raffle as provided in section 99B.7.

11. "*Posted*" means that the person conducting a game has caused to be placed near the front or playing area of the game a sign at least thirty inches by thirty inches, with permanent material and lettering, stating at the top in letters at least three inches high: "Rules of the Game". Thereunder there shall be set forth in large, easily readable print, the name of the game, the price to play the game, the complete rules for the game and the name and permanent mailing address of the owner of the game.

12. "*Social games*" means and includes only the activities permitted by section 99B.12, subsection 2.

13. A person "*conducts*" a specified activity if that person owns, promotes, sponsors, or operates a game or activity. A natural person does not "conduct" a game or activity if the person is merely a participant in a game or activity which complies with section 99B.12.

14. "*Amusement concession*" means any place where a single game of skill or game of chance is conducted by a person for profit, and includes the area within which are confined the equipment, playing area and other personal property necessary for the conduct of the game.

15. "*Amusement device*" means an electrical or mechanical device possessed and used in accordance with section 99B.10. When possessed and used in accordance with that section, an amusement device is not a game of skill or game of chance, and is not a gambling device.

16. "*Division*" means the racing and gaming division of the department of inspections and appeals.

17. "*Bookmaking*" as used herein means the taking or receiving of any bet or wager upon the result of any trial or contest of skill, speed, power or endurance of human, beast, fowl or motor vehicle, which is not a wager or bet pursuant to section 99B.12, subsection 2, paragraph "c", or which is laid off, placed, given, received or taken, by an individual who was not present when the wager or bet was undertaken, or by any publicly or privately owned enterprise where such wagers or bets may be undertaken.

18. "*Bona fide social relationship*" as used herein means a real, genuine, unfeigned social relationship between two or more persons wherein each person has an established knowledge of the other, which has not arisen for the purpose of gambling.

19. "*Applicant*" means an individual or an organization.

20. "*Eligible applicant*" means an applicant who meets all of the following requirements:

a. The applicant's financial standing and good reputation are within the standards established by the division by rule under chapter 17A so as to satisfy the administrator of the division that the applicant will comply with this chapter and the rules applicable to operations under it.

b. The applicant is a citizen of the United States and a resident of this state, or a corporation licensed to do business in this state, or a business that has an established place of business in this state or that is doing business in this state.

c. The applicant has not been convicted of a felony. However, if the applicant's conviction occurred more than five years before the date of the application for a

license, and if the applicant's rights of citizenship have been restored by the governor, the administrator of the division may determine that the applicant is an eligible applicant.

If the applicant is an organization, then the requirements of paragraphs "a", "b", and "c" apply to its officers, directors, partners and controlling shareholders.

21. "*Controlling shareholder*" means either of the following:

a. A person who directly or indirectly owns or controls ten percent or more of any class of stock of a license applicant.

b. A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of a license applicant.

22. "*Bingo occasion*" means a single gathering or session at which successive bingo games are played. A bingo occasion commences when the operator of the game begins to announce the number, letter, or combination of numbers or letters through which the winner of a single bingo game will be determined.

23. "*Merchandise*" includes lottery tickets or shares sold or authorized under chapter 99E. The value of the ticket or share is the price of the ticket or share as established by the lottery division of the department of revenue and finance pursuant to chapter 99E.

87 Acts, ch 115, §14 SF 374

See Code editor's note at chapter 10A, article VII

Subsection 16 amended

99B.2 Licensing—records required—bingo accounts—inspections—penalties.

1. The division shall issue the licenses required by this chapter. A license shall not be issued, except upon submission to the division of an application on forms furnished by the division, and the required license fee. A license may be issued to an eligible applicant. However, a license shall not be issued to an applicant who has been convicted of or pled guilty to a violation of this chapter, or who has been convicted of or pled guilty to a violation of chapter 123 that resulted, at any time, in revocation of a license issued to the applicant under chapter 123 or that resulted, within the twelve months preceding the date of application for a license required by this chapter, in suspension of a license issued under chapter 123. To be eligible for a two-year license under section 99B.7, an organization shall have been in existence at least five years prior to the date of issuance of the license. However, an organization which has been in existence for less than five years prior to the date of issuance of the license may obtain a two-year license if either of the following conditions apply:

a. That prior to July 1, 1984, the organization was licensed under this subsection.

b. If the organization is a local chapter of a national organization and the national organization is a tax-exempt organization under one of the provisions enumerated in section 99B.7, subsection 1, paragraph "m", then the local organization is eligible for a two-year license if the national organization has been in existence at least five years.

A license shall not be issued to an individual whose previous license issued under this chapter or chapter 123 has been revoked until the period of revocation or revocations has elapsed. This prohibition applies even though the individual has created a different legal entity than the one to which the previous license that had been revoked was issued. Except as otherwise provided in this chapter, a license is valid for a period of two years from the date of issue. The license fee is not refundable, but shall be returned to the applicant if an application is not approved. If a bingo license is issued by the division, the licensee shall be notified by the division of the renewal date for the license ten days prior to that date.

2. A licensee other than one issued a license pursuant to section 99B.3, 99B.6 or 99B.9 shall maintain proper books of account and records showing in addition to any other information required by the division, gross receipts and the amount

of the gross receipts taxes collected or accrued with respect to gambling activities, all expenses, charges, fees and other deductions, and the cash amounts, or the cost to the licensee of goods or other noncash valuables, distributed to participants in the licensed activity. If the licensee is a qualified organization, the amounts dedicated and the date and name and address of each person to whom distributed also shall be kept in the books and records. The books of account and records shall be made available to the division or a law enforcement agency for inspection at reasonable times, with or without notice. A failure to permit inspection is a serious misdemeanor.

3. A qualified organization conducting bingo occasions under a two year license and expecting to have annual gross receipts of more than ten thousand dollars shall establish and maintain one regular checking account designated the "bingo account" and may also maintain one or more interest-bearing savings accounts designated as "bingo savings account".

a. Funds derived from the conduct of bingo, less the amount awarded as cash prizes, shall be deposited in the bingo account. No other funds except limited funds of the organization deposited to pay initial or unexpected emergency expenses shall be deposited in the bingo account. Deposits shall be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained. Accounts shall be maintained in a financial institution in Iowa.

b. Funds from the bingo account shall be withdrawn by preprinted, consecutively numbered checks or share drafts, signed by a duly authorized representative of the licensee and made payable to a person or organization. Checks shall be imprinted with the words "Bingo Account" and shall contain the organization's gambling license number on the face of the check. There shall also be noted on the face of the check or share draft the nature of the payment made. A check or slip shall not be made payable to "cash," "bearer," or a fictitious payee. Checks, including voided checks and drafts, shall be kept and accounted for.

c. Checks shall be drawn on the bingo account for only the following purposes:

(1) The payment of necessary and reasonable bona fide expenses permitted under section 99B.7, subsection 3, paragraph "b", incurred and paid in connection with the conduct of bingo.

(2) The disbursement of net proceeds derived from the conduct of bingo to charitable purposes as required by section 99B.7, subsection 3, paragraphs "b" and "c".

(3) The transfer of net proceeds derived from the conduct of bingo to a bingo savings account pending disbursement to a charitable purpose.

(4) To withdraw initial or emergency funds deposited under subsection 3, paragraph "a".

(5) To pay prizes if the qualified organization decides to pay prizes by check rather than cash.

d. The disbursement of net proceeds on deposit in a bingo savings account to a charitable purpose shall be made by transferring the intended disbursement back into the bingo account and then withdrawing the amount by a check drawn on that account as prescribed in this section.

e. Except as permitted by subsection 3, paragraph "a", gross receipts derived from the conduct of bingo shall not be commingled with other funds of the licensed organization. Except as permitted by paragraph "c", subparagraphs (3) and (4), gross receipts shall not be transferred to another account maintained by the licensed organization.

4. A licensee required by subsection 2 to maintain records shall submit quarterly reports to the division on forms furnished by the division. These reports shall be due thirty days following the end of each calendar quarter. The reports shall contain a compilation of the information required to be recorded by subsection 2, and shall include all of the transactions occurring during the

three-month period for which the report is submitted. Failure to submit the quarterly reports is grounds for revocation of the license. Willful failure to submit quarterly reports is a serious misdemeanor. However, the time for filing of reports may be extended for thirty days if the licensee makes written request to the division for an extension which request shows good cause for granting the extension. A person who intentionally files a false or fraudulent report or application with the division commits a fraudulent practice.

5. An organization receiving funds reported as being dedicated by a qualified organization shall maintain proper books of account and records showing both the receipt and the use of the funds. These records shall be made available to the division or a law enforcement agency for inspection with or without notice at reasonable times. A failure to permit inspection is a serious misdemeanor.

87 Acts, ch 184, §1 SF 55
Subsection 1, unnumbered paragraph 2 amended

99B.5 Raffles conducted at a fair.

1. Raffles lawfully may be conducted at a fair, but only if all of the following are complied with:

a. The raffle is conducted by the sponsor of the fair or a qualified organization licensed under section 99B.7 that has received permission from the sponsor of the fair to conduct the raffle.

b. The sponsor of the fair or the qualified organization has submitted a license application and a fee of thirty dollars for each raffle, has been issued a license, and prominently displays the license at the drawing area of the raffle.

c. The raffle is posted.

d. Except with respect to an annual raffle as provided in paragraph "g", the cost of each chance in or ticket to the raffle does not exceed one dollar.

e. Except with respect to an annual raffle as provided in paragraph "g", cash prizes are not awarded and merchandise prizes are not repurchased.

f. The raffle is not operated on a pyramid or build-up basis.

g. The actual retail value of any prize does not exceed fifty dollars. If a prize consists of more than one item, unit, or part, the aggregate retail value of all items, units, or parts shall not exceed fifty dollars. However, either a fair sponsor or a qualified organization, but not both, may hold one raffle per calendar year at which prizes having a combined value not greater than twenty thousand dollars may be offered. If the prize is merchandise, its value shall be determined by the purchase price paid by the fair sponsor or qualified organization.

h. The raffle is conducted in a fair and honest manner.

2. It is lawful for an individual other than a person conducting the raffle to participate in a raffle conducted at a fair, whether or not conducted in compliance with subsection 1.

87 Acts, ch 184, §2 SF 55
Subsection 1, paragraph g amended

99B.6 Games where liquor or beer is sold.

1. Except as provided in subsections 5, 6, and 7, gambling is unlawful on premises for which a class "A", class "B", class "C", or class "D" liquor control license, or class "B" beer permit has been issued pursuant to chapter 123 unless all of the following are complied with:

a. The holder of the liquor control license or beer permit has submitted an application for a license and an application fee of one hundred dollars, and has been issued a license, and prominently displays the license on the premises.

b. The holder of the liquor control license or beer permit or any agent or employee of the license or permit holder does not participate in, sponsor, conduct or promote, or act as cashier or banker for any gambling activities, except as a participant while playing on the same basis as every other participant.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

f. No person receives or has any fixed or contingent right to receive, directly or indirectly, any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

g. No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

h. No participant wins or loses more than a total of fifty dollars or more consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

i. No participant is participating as an agent of another person.

j. A representative of the division or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

k. No person under the age of eighteen years may participate in the gambling except pursuant to sections 99B.3, 99B.4, 99B.5 and 99B.7. Any licensee knowingly allowing a person under the age of eighteen to participate in the gambling prohibited by this paragraph or any person knowingly participating in such gambling with a person under the age of eighteen, shall be guilty of a simple misdemeanor.

2. The holder of a license issued pursuant to this section is strictly accountable for complying with subsection 1. Proof of an act constituting a violation is grounds for revocation of the license issued pursuant to this section if the holder of the license permitted the violation to occur when the licensee knew or had reasonable cause to know of the act constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits or engages in acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. Lottery tickets or shares authorized pursuant to chapter 99E may be sold on the premises of an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3.

6. A qualified organization may conduct games of skill, games of chance, or raffles pursuant to section 99B.7 in an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the games or raffles are conducted pursuant to this chapter or rules adopted pursuant to this chapter.

7. The holder of a liquor control license or beer permit may conduct a sports betting pool if the game is publicly displayed and the rules of the game, including the cost per participant and the amount of the winning is conspicuously displayed on or near the pool. No participant may wager more than five dollars and the maximum winnings to all participants from the pool shall not exceed five hundred dollars. The provisions of subsection 1, except paragraphs "c" and "h" and the prohibition of the use of concealed numbers in paragraph "d", are applicable to pools conducted under this subsection. If a pool permitted by this subsection involves the use of concealed numbers, the numbers shall be selected by a random method and no person shall be aware of the numbers at the time wagers are made in the pool. All moneys wagered shall be awarded to participants. For purposes of this subsection, "pool" means a game in which the participants select a square on a grid corresponding to numbers on two intersecting sides of the grid and winners are determined by whether the square selected corresponds to numbers relating to an athletic event in the manner prescribed by the rules of the game.

87 Acts, ch 184, §3, 4 SF 55

Amendments effective June 3, 1987

Subsection 1, unnumbered paragraph 1 amended

NEW subsection 7

99B.7 Games conducted by qualified organizations—penalties.

1. Except as otherwise provided in section 99B.8, games of skill, games of chance and raffles lawfully may be conducted at a specified location meeting the requirements of subsection 2 of this section, but only if all of the following are complied with:

a. The person conducting the game or raffle has been issued a license pursuant to subsection 3 of this section and prominently displays that license in the playing area of the games.

b. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game of skill, game of chance, or raffle, except any amount which the person may win as a participant on the same basis as the other participants. A person conducting a game or raffle shall not be a participant in the game or raffle.

c. Cash or merchandise prizes may be awarded in the game of bingo and shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, however, the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts, shall not exceed one hundred dollars. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize may be increased by not more than one hundred dollars after each day's game. However, the cost of play in a jackpot bingo game shall not be increased and the jackpot shall not amount to more than seven hundred fifty dollars in cash or actual retail value of merchandise prizes. A jackpot bingo game is not prohibited by paragraph "h". A bingo occasion shall not last for longer than four consecutive hours. A qualified organization shall not hold more than fourteen bingo occasions per month. Bingo occasions held under a limited license shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month, nor shall bingo occasions held under a limited license be limited to four consecutive hours. With the exception of a limited license bingo, no more than three bingo occasions per week shall be held within a structure or building and only one person licensed to conduct games under this section may hold bingo occasions within a structure or building.

However, a qualified organization, which is a senior citizens' center or a residents' council at a senior citizen housing project or a group home, may hold more than fourteen bingo occasions per month and more than three bingo occasions per week within the same structure or building, and bingo occasions conducted by such a qualified organization may last for longer than four

consecutive hours, if the majority of the patrons of the qualified organization's bingo occasions also participate in other activities of the senior citizens' center or are residents of the housing project. At the conclusion of each bingo occasion, the person conducting the game shall announce both the gross receipts received from the bingo occasion and the use permitted under subsection 3, paragraph "b", to which the net receipts of the bingo occasion will be dedicated and distributed.

d. Cash prizes shall not be awarded in games other than bingo and raffles. The actual retail value of any merchandise prizes shall not exceed fifty dollars and merchandise prizes shall not be repurchased. However, one raffle may be conducted per calendar year at which a prize having a value not greater than twenty thousand dollars may be awarded. If the prize is merchandise, its value shall be determined by purchase price paid by the organization or donor.

e. Except as provided in paragraph "d" of this subsection with respect to an annual raffle, the cost to a participant for each game shall not exceed one dollar.

f. No prize is displayed which cannot be won.

g. Merchandise prizes are not repurchased.

h. A game or raffle shall not be operated on a build-up or pyramid basis.

i. Concealed numbers or conversion charts shall not be used to play any game and a game or raffle shall not be adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

j. The game must be conducted in a fair and honest manner.

k. Each game or raffle shall be posted.

l. During the entire time that games permitted by this section are being engaged in, both of the following are observed:

(1) No other gambling is engaged in at the same location, except that lottery tickets or shares issued by the lottery division of the department of revenue and finance may be sold pursuant to chapter 99E.

(2) No free prize or other gift is given to a participant. However, one or more door prizes of a value not to exceed ten dollars each may be given by random drawing.

m. The person or organization conducting the game can show to the satisfaction of the division that the person or organization is eligible for exemption from federal income taxation under either section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code of 1954, as defined in section 422.3. However, this paragraph does not apply to a political party as defined in section 43.2, to a nonparty political organization that has qualified to place a candidate as its nominee for statewide office pursuant to chapter 44, or to a candidate committee as defined in section 56.2.

n. The person conducting the game does none of the following:

(1) Hold, currently, another license issued under this section.

(2) Own or control, directly or indirectly, any class of stock of another person who has been issued a license to conduct games under this section.

(3) Have, directly or indirectly, an interest in the ownership or profits of another person who has been issued a license to conduct games under this section.

a. Except as provided in subsection 6, paragraph "a", a person shall not conduct, promote, administer, or assist in the conducting, promoting or administering of a bingo occasion, unless the person regularly participates in activities of the qualified organization other than conducting bingo occasions or participates in an educational, civic, public, charitable, patriotic, or religious organization to which the net receipts are dedicated by the qualified organization.

p. The person or organization shall keep records of all persons who serve as manager or cashier, or who are responsible for carrying out duties with respect to a bingo account. Any person or organization which knowingly permits a person

who was a manager, cashier, or responsible for carrying out duties with respect to a bingo account for another organization at the time of one or more violations leading to revocation of its license, and which license is currently under revocation shall be subject to license revocation.

2. Games of skill, games of chance, and raffles may be conducted on premises owned or leased by the licensee, but shall not be conducted on rented premises unless the premises are rented from a person licensed under this section, and unless the net rent received is dedicated to one or more of the uses permitted under subsection 3 for dedication of net receipts. This subsection shall not apply where the rented premises are those upon which a qualified organization usually carries out a lawful business other than operating games of skill, games of chance or raffles. However, a qualified organization may rent premises other than from a licensed qualified organization to be used for the conduct of games of skill, games of chance and raffles, and the person from whom the premises are rented may impose and collect rent for such use of those premises, but only if all of the following are complied with:

a. The rent imposed and collected shall not be a percentage of or otherwise related to the amount of the receipts of the game or raffle.

b. The qualified organization shall have the right to terminate any rental agreement at any time without penalty and without forfeiture of any sum.

c. Except for purposes of bingo, the person from whom the premises are rented shall not be a liquor control licensee or beer permittee with respect to those premises or with respect to adjacent premises.

The board of directors of a school district may authorize that public schools within that district, and the policymaking body of a nonpublic school, may authorize that games of skill, games of chance, bingo and raffles may be held at bona fide school functions, such as carnivals, fall festivals, bazaars and similar events. Each school shall obtain a license pursuant to this section prior to permitting the games or activities on the premises. However, the board of directors of a public school district may also be issued a license under this section. However, a board of directors of a public school shall not spend or authorize the expenditure of public funds for the purpose of purchasing a license. The division shall provide by rule a short form application for a license issued to a board of directors. Upon written approval by the board of directors, the license may be used by any school group or parent support group in the district to conduct activities authorized by this section. The board of directors shall not authorize a school group or parent support group to use the license more than twice in twelve months.

3. a. A person wishing to conduct games and raffles pursuant to this section as a qualified organization shall submit an application and a license fee of one hundred dollars. However, upon submission of an application accompanied by a license fee of fifteen dollars, a person may be issued a limited license which shall authorize the person to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days. A limited license shall not be issued more than once during any calendar year to the same person, or for the same location. For the purposes of this paragraph, a limited license is deemed to be issued on the first day of the fourteen-day period for which the license is issued.

b. A person or the agent of a person submitting application to conduct games pursuant to this section as a qualified organization shall certify that the receipts of all games, less reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, either will be distributed as prizes to participants or will be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses in this state and that the amount dedicated and distributed will equal at least seventy percent of the net receipts. "*Educational, civic, public, charitable, patriotic, or religious uses*" means uses benefiting a society for the

prevention of cruelty to animals or animal rescue league, or uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government, or uses benefiting any bona fide nationally chartered fraternal or military veterans' corporation or organization which operates in Iowa a clubroom, post, dining room, or dance hall, but does not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used for one or more of the uses stated. "Public uses" specifically includes dedication of net receipts to political parties as defined in section 43.2. "Charitable uses" includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm when the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury, causing severe loss of income or incurring extraordinary medical expense when the loss is uncompensated by insurance.

Proceeds given to another charitable organization to satisfy the seventy percent dedication requirement shall not be used by the donee to pay any expenses in connection with the conducting of bingo by the donor organization, or for any cause, deed, or activity that would not constitute a valid dedication under this section.

c. A qualified organization shall distribute amounts awarded as prizes on the day they are won. A qualified organization shall dedicate and distribute the balance of the net receipts received within a quarter and remaining after deduction of reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, before the quarterly report required for that quarter under section 99B.2, subsection 4, is due. The amount dedicated and distributed must equal at least seventy-five percent of the net receipts. A person desiring to hold the net receipts for a period longer than permitted under this paragraph shall apply to the division for special permission and upon good cause shown the division may grant the request.

If permission is granted to hold the net receipts, the person shall, as a part of the quarterly report required by section 99B.2, report the amount of money currently being held and all expenditures of the funds. This report shall be filed even if the person no longer holds a gambling license.

4. It is lawful for an individual other than a person conducting games or raffles to participate in games or raffles conducted by a qualified organization, whether or not there is compliance with subsections 2 and 3: However, it is unlawful for the individual to participate where the individual has knowledge of or reason to know facts which constitute a failure to comply with subsection 1.

5. A political party or a political party organization is a qualified organization within the meaning of this chapter. Political parties or party organizations may contract with other qualified organizations to conduct the games of skill, games of chance, and raffles which may lawfully be conducted by the political party or party organization. A licensed qualified organization may promote the games of skill, games of chance, and raffles which it may lawfully conduct.

6. Proceeds coming into the possession of a person under this section are deemed to be held in trust for payment of expenses and dedication to charitable purposes as required by this section.

a. Except as provided in this paragraph, a person shall not be compensated for services rendered in connection with a game of skill, game of chance, or raffle conducted under this section. This section forbids payment of compensation to persons including, but not limited to, managers, callers, cashiers, floor workers, janitorial personnel, accountants and bookkeepers. The privilege of selling merchandise on the premises during a bingo occasion is deemed to be compensation. However, not more than four persons per one hundred players, participating

in the bingo occasion may be employed. An employee under this paragraph need not be a member of the qualified organization or a regular participant in the activities of the qualified organization or in an educational, civic, public, charitable, patriotic, or religious organization to which the net receipts are dedicated by the qualified organization. The wages of an employee shall not exceed the federal minimum wage. This section does not prohibit the employment of one or more individuals to serve as security officers. A person who knowingly pays or receives compensation in violation of this section commits a fraudulent practice.

b. A licensee or agent who willfully fails to dedicate the required amount of proceeds to charitable purposes as required by this section commits a fraudulent practice.

c. Violations of paragraphs "a" and "b" may be considered as a single fraudulent practice and the value may be the total value of all money, property and services involved.

87 Acts, ch 184, §5, 6 SF 55
 Amendments effective June 3, 1987
 Subsection 1, NEW paragraph p
 Subsection 2, paragraph c, unnumbered paragraph 1 amended

99B.8 Annual game night.

1. Games of skill, games of chance, card games and raffles lawfully may be conducted during a period of twelve consecutive hours once each year by any person. The games or raffles may be conducted at any location except one for which a license is required pursuant to section 99B.3 or section 99B.5, but only if all of the following are complied with:

a. The sponsor of the event has been issued a license pursuant to subsection 3 and prominently displays that license on the premises covered by the license.

b. A bona fide social or employment relationship exists between the sponsor and all of the participants.

c. No participant pays any consideration of any nature, either directly or indirectly, to participate in the games or raffles.

d. All money or other items wagered are provided to the participant free by the sponsor.

e. The person conducting the game or raffle receives no consideration, either directly or indirectly, other than good will.

f. During the entire time activities permitted by this section are being engaged in, no other gambling is engaged in at the same location.

2. The other provisions of this section notwithstanding, if the games or raffles are conducted by a qualified organization also licensed under section 99B.7, the sponsor may charge an entrance fee or a fee to participate in the games or raffles, and participants may wager their own funds and pay an entrance or other fee for participation, provided that a participant may not expend more than a total of fifty dollars for all fees and wagers. The provisions of section 99B.7, subsection 3, paragraphs "b" and "c", shall apply to games and raffles conducted by a qualified organization pursuant to this section.

3. The division may issue a license pursuant to this section only once during a calendar year to any one person. The license may be issued only upon submission to the division of an application and a license fee of twenty-five dollars.

4. However, an organization may sponsor one or more game nights using play money for participation by students without the organization obtaining a license otherwise required by this section if the organization obtains prior approval for the game night from the board of directors of the accredited public school or the

authorities in charge of the nonpublic school accredited by the state board of education for whose students the game night is to be held.

87 Acts, ch 184, §7, 8 SF 55
 Amendments effective June 3, 1987
 Subsection 1, unnumbered paragraph 1 amended
 Subsection 3 amended

99B.10 Mechanical and electronic amusement devices.

It is lawful to own, possess, and offer for use by any person at any location an electrical or mechanical amusement device, but only if all of the following are complied with:

1. A prize of merchandise exceeding five dollars in value or cash shall not be awarded for use of the device. However, a mechanical or amusement device may be designed or adapted to award a prize or one or more free games or portions of games without payment of additional consideration by the participant.

2. An amusement device shall not be designed or adapted to cause or to enable a person to cause the release of free games or portions of games when designated as a potential award for use of the device, and shall not contain any meter or other measurement device for recording the number of free games or portions of games which are awarded.

3. An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.

It is lawful for an individual other than an owner or promoter of an amusement device to operate an amusement device, whether or not the amusement device is owned, possessed or offered for use in compliance with this section.

The use of an amusement device which complies with this section shall not be deemed gambling.

87 Acts, ch 234, §425 HF 671
 Subsection 1 amended

99B.19 Attorney general and county attorney.

Upon request of the racing and gaming division of the department of inspections and appeals or the division of criminal investigation of the department of public safety, the attorney general shall institute in the name of the state the proper proceedings against a person charged by either department with violating this chapter, and a county attorney, at the request of the attorney general, shall appear and prosecute an action when brought in the county attorney's county.

87 Acts, ch 115, §15 SF 374
 See Code editor's note at chapter 10A, article VII
 Section amended

99B.20 Division of criminal investigation.

The division of criminal investigation of the department of public safety may investigate to determine licensee compliance with the requirements of this chapter. Investigations may be conducted either on the criminal investigation division's own initiative or at the request of the racing and gaming division of the department of inspections and appeals. The criminal investigation division and the racing and gaming division shall cooperate to the maximum extent possible on an investigation.

87 Acts, ch 115, §16 SF 374
 See Code editor's note at chapter 10A, article VII
 Section amended

CHAPTER 99D

IOWA PARI-MUTUEL WAGERING ACT

99D.6 Chairperson—administrator—employees —duties—bond.

The commission shall elect in July of each year one of its members chairperson for the succeeding year. The commission shall appoint an administrator of the racing and gaming division of the department of inspections and appeals subject to confirmation by the senate. The administrator shall serve a four-year term. The term shall begin and end in the same manner as set forth in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator may hire other assistants and employees as necessary to carry out the division's duties. Some or all of the information required of applicants in section 99D.8A, subsections 1 and 2, may also be required of employees of the division if the commission deems it necessary. The administrator shall keep a record of the proceedings of the commission, and preserve the books, records, and documents entrusted to the administrator's care. The commission shall require the administrator to post a bond in a sum it may fix, conditioned upon the faithful performance of the administrator's duties. Subject to the approval of the governor, the commission shall fix the compensation of the administrator within salary range five as set by the general assembly. The division shall have its headquarters in the city of Des Moines, and shall meet in July of each year and at other times and places as it finds necessary for the discharge of its duties.

87 Acts, ch 115, §17 SF 374
See Code editor's note at chapter 10A, article VII
Section amended

99D.16 Withholding tax on winnings.

All winnings provided in section 99D.11 are Iowa earned income and are subject to state and federal income tax laws. An amount deducted from winnings for payment of the state tax shall be remitted to the department of revenue and finance on behalf of the individual who won the wager.

87 Acts, ch 214, §1 HF 675
Retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 214, §12 HF 675
NEW section

CHAPTER 99E

IOWA LOTTERY ACT

99E.9 Duties of the board and commissioner—contracts—rules.

1. The board and the commissioner shall supervise the lottery in order to produce the maximum amount of net revenues for the state in a manner which maintains the dignity of the state and the general welfare of the people.

2. Subject to the approval of the board, the commissioner may enter into contracts for the operation and marketing of the lottery, except that the board may by rule designate classes of contracts other than major procurements which do not require prior approval by the board. A major procurement shall be as the result of competitive bidding with the contract being awarded to the responsible vendor submitting the lowest and best proposal. However, before a contract for a major procurement is awarded, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the vendor, any parent or subsidiary corporation of the vendor, all shareholders of five percent or more interest of the vendor or parent or subsidiary corporation of the vendor, and all officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded. The vendor shall submit to the

division of criminal investigation appropriate investigation authorizations to facilitate this investigation. A contract for a major procurement awarded or entered into by the commissioner with an individual or business organization shall require that individual or business organization to establish a permanent office in this state. As used in this subsection, "major procurement" means consulting agreements and the major procurement contract with a business organization for the printing of tickets, or for purchase or lease of equipment or services essential to the operation of a lottery game.

3. Except as provided in paragraph "b", the board shall make rules in accordance with chapter 17A for implementing and enforcing this chapter. The rules shall include but are not limited to the following subject matters:

a. The fees charged for a license to sell lottery tickets or shares. Revenue received by the lottery from license fees shall be transferred to the lottery fund immediately after the cost of processing license applications is deducted.

b. The types of lottery games to be conducted. Rules governing the operation of a class of games are subject to chapter 17A. However, rules governing the particular features of specific games within a class of games are not subject to chapter 17A. Such rules may include, but are not limited to, setting the name and prize structure of the game and shall be made available to the public prior to the time the games go on sale and shall be kept on file at the office of the commissioner. The board shall authorize instant lottery and on-line lotto games and may authorize the use of any type of lottery game that on May 3, 1985 has been conducted by a state lottery of another state in the United States, or any game that the board determines will achieve the revenue objectives of the lottery and is consistent with subsection 1. However, the board shall not authorize a game using electronic computer terminals or other devices if the terminals or devices dispense coins or currency upon the winning of a prize. In a game utilizing instant tickets, each ticket in the game shall bear a unique consecutive serial number distinguishing it from every other ticket in the game, and each lottery number or symbol shall be accompanied by a confirming caption consisting of a repetition of a symbol or a description of the symbol in words. In the game other than an instant game which uses tangible evidence of participation, each ticket shall bear a unique serial number distinguishing it from every other ticket in the game.

c. The price of tickets or shares in the lottery, including but not limited to authorization of sales of tickets or shares at a discount for marketing purposes.

d. The number and size of the prizes on the winning tickets or shares, including but not limited to prizes of free tickets or shares in lottery games conducted by the lottery and merchandise prizes. The lottery division shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination which were awarded.

e. The method of selecting the winning tickets or shares and the manner of payment of prizes to the holders of winning tickets or shares. The rules may provide for payment by the purchase of annuities in the case of prizes payable in installments. Lottery employees shall examine claims and shall not pay any prize for altered, stolen, or counterfeit tickets or shares nor tickets or shares which fail to meet validation rules established for a lottery game. A prize shall not be paid more than once. If the commissioner determines that more than one person is entitled to a prize, the sole remedy of the claimants is to receive an equal share in the single prize. The rules may provide for payment of prizes directly by the licensee.

f. The methods of validation of the authenticity of winning tickets or shares.

g. The frequency of selection of winning tickets or shares. Drawings shall be held in public. Drawings shall be witnessed by an independent certified public accountant. Equipment used to select winning tickets or shares or participants for prizes shall be examined by lottery division employees and an independent certified public accountant prior to and after each public drawing.

h. Requirements for eligibility for participation in runoff drawings, including but not limited to requirements for submission of evidence of eligibility.

i. The locations at which tickets or shares may be sold. The board may authorize the sale of tickets or shares on the premises of establishments which sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

j. The method to be used in printing and selling tickets or shares. An elected official's name shall not be printed on the tickets. The overall estimated odds of winning a prize in a given game shall be printed on each ticket if the games have either preprinted winners or fixed odds. Estimated odds of winning a prize are not required to be printed on tickets in lottery games of a pari-mutuel nature. As used in this paragraph, "games of a pari-mutuel nature" means a game in which the amount of the winnings and the odds of winning are determined by the number of participants in the game.

k. The issuing of licenses to sell tickets or shares. In addition to any other rules made regarding the qualifications of an applicant for a license, a person shall not be issued a license unless the person meets the criteria established in section 99E.16, subsection 7.

l. The compensation to be paid licensees including but not limited to provision for variable compensation based on sales volume or incentive considerations.

m. The form and type of marketing, informational, and educational material to be permitted. Marketing material and campaigns shall include the concept of investing in Iowa's economic development and show the economic development initiatives funded from lottery revenue.

n. Subject to section 99E.10, the apportionment of the annual revenues accruing from the sale of lottery tickets or shares and from other sources for the payment of prizes to the holders of winning tickets or shares and for the following:

(1) The payment of costs incurred in the operation and administration of the lottery and the lottery division, including the expenses of the lottery and the cost resulting from contracts entered into for consulting or operational services, or for marketing.

(2) Actual and necessary expenses of all audits performed pursuant to section 99E.20, subsection 3.

(3) Incentive programs for lottery licensees and lottery employees.

(4) Payment of compensation to licensees necessary to provide for the adequate availability of tickets, shares, or services to prospective buyers and for the convenience of the public.

(5) The purchase or lease of lottery equipment, tickets, and materials.

a. Requirement that a licensee either print or stamp the licensee's name and address on the back of each instant ticket.

4. The board and the commissioner may enter into written agreements or compacts with another state or states or one or more political subdivisions of another state or states for the operation, marketing, and promotion of a joint lottery or joint lottery games.

5. The board may authorize the commissioner to enter into written agreements with business entities for special lottery promotions in which, incident to the special lottery games, additional prizes, including annuities, may be purchased by the business entity and transferred to the lottery division for payment to qualifying holders of lottery tickets or shares.

6. If reasonably practical when the lottery division awards a contract under subsection 2, for the lease or purchase of a machine to be used in the conducting of a lottery game including, but not limited to, a video lottery machine or machine

used in lotto, the lottery division shall give preference to awarding the contract to a responsible vendor who manufactures the machines in the state, provided the costs and benefits to the lottery division are equal to those available from competing vendors.

If reasonably practical when the lottery division awards a contract under subsection 2, for the servicing of a machine to be used in the conducting of a lottery game including, but not limited to, a video lottery machine or a machine used in lotto, the lottery division shall give preference to a responsible vendor whose principal place of business is in Iowa, provided the costs and benefits to the lottery division are equal to those available from competing vendors.

7. In making decisions relating to the marketing or advertising of the Iowa lottery and the various games offered, the board shall give consideration to marketing or advertising through Iowa-based advertising agencies and media outlets.

87 Acts, ch 231, §1 SF 515
NEW subsection 7

99E.10 Allocation and appropriation of funds generated—Iowa plan fund.

1. Upon receipt of any revenue, the commissioner shall deposit the moneys in the lottery fund created pursuant to section 99E.20. As nearly as is practicable, at least fifty percent of the projected annual revenue, after deduction of the amount of the sales tax, accruing from the sale of tickets or shares is appropriated for payment of prizes to the holders of winning tickets. After the payment of prizes, all of the following shall be deducted from lottery revenue prior to disbursement:

a. An amount equal to one half of one percent of the gross lottery revenue shall be deposited in a gamblers assistance fund in the office of the treasurer of state. Moneys in the fund shall be administered by the commissioner of human services and used to provide assistance and counseling to individuals and families experiencing difficulty as a result of gambling losses and to promote awareness of "Gamblers Anonymous" and similar assistance programs.

b. An amount equal to four percent of the gross sales price of each ticket or share sold shall be deducted as the sales tax on the sale of that ticket or share, remitted to the treasurer of state and deposited into the state general fund.

c. The expenses of conducting the lottery including the reasonable expenses incurred by the attorney general's office in enforcing this chapter.

d. The contractual expenses required in this paragraph. The division of criminal investigation shall be the primary state agency responsible for investigating criminal violations of the law under this chapter. The commissioner shall contract with the department of public safety for investigative services, including the employment of special agents and support personnel, and procurement of necessary equipment to carry out the responsibilities of the division of criminal investigation under the terms of the agreement and this chapter.

Lottery expenses for marketing, educational, and informational material shall not exceed four percent of the lottery revenue.

The Iowa plan fund for economic development, also to be known as the Iowa plan fund, is created in the office of the treasurer of state. Lottery revenue remaining after expenses are determined shall be transferred to the Iowa plan fund on a monthly basis. Revenues generated during the last month of the fiscal year which are transferred to the Iowa plan fund during the following fiscal year shall be considered revenues transferred during the previous fiscal year for purposes of the allotments made to and appropriations made from the separate accounts in the Iowa plan fund for that previous fiscal year. However, upon the request of the director and subject to approval by the treasurer of state, an amount sufficient to cover the foreseeable administrative expenses of the lottery for a period of twenty-one days may be retained from the lottery revenue. Prior to the monthly transfer to the Iowa plan fund, the director may direct that lottery

revenue shall be deposited in the lottery fund and in interest bearing accounts designated by the treasurer of state in the financial institutions of this state or invested in the manner provided in section 452.10. Interest or earnings paid on the deposits or investments is considered lottery revenue and shall be transferred to the Iowa plan fund in the same manner as other lottery revenue. Money in the Iowa plan fund shall be deposited in interest bearing accounts in financial institutions in this state or invested in the manner provided in section 452.10. The interest or earnings on the deposits or investments shall be considered part of the Iowa plan fund and shall be retained in the fund unless appropriated by the general assembly.

2. Funds transferred to the Iowa plan fund shall be used for economic development initiatives. As used in this subsection "*economic development initiatives*" means initiatives which encourage development of capital, research and development of new products, and development of jobs in this state by expanding existing business and industry; upgrade academic institutions in order to maintain and attract business and industry, creating new businesses and industries; encourage the conservation of energy in order to create new jobs and attract new business and industry; develop alternate methods for the disposal of solid or hazardous waste; develop markets for products grown or produced or manufactured in the state including the promotion of Iowa and Iowa products; and make grants and loans available to local communities for local economic development initiatives. "*Economic development initiatives*" includes "*economic development projects*" which, as used in this subsection, means a project which creates a new business or expands an existing business within the state of Iowa. "*Economic development initiatives*" does not include providing loans, grants, bonds, or any other incentive or assistance for the construction of a racetrack or other facility where gambling will be permitted.

3. Funds equal to any initial appropriation from the general fund to the lottery shall be returned to the general fund from the receipts of the sale of tickets or shares not later than July 1, 1986. The director of management shall not include lottery revenues in the director's fiscal year revenue estimates. Moneys in the Iowa plan fund shall not be considered to be a part of the Iowa economic emergency fund.

87 Acts, ch 231, §2 SF 515
Subsection 1, unnumbered paragraph 3 amended

99E.20 Deposit of receipts—lottery fund—audits.

1. The board shall adopt rules for the deposit as soon as possible in the lottery fund of money received by licensees from the sale of tickets or shares less the amount of compensation, if any, authorized under section 99E.16, subsection 6. Subject to approval of the board, the commissioner may require licensees to file with the commissioner reports of receipts and transactions in the sale of tickets or shares. The reports shall be in the form and contain the information the commissioner requires.

2. A lottery fund is created in the office of the treasurer of state. The fund consists of all revenues received from the sale of lottery tickets or shares and all other moneys lawfully credited or transferred to the fund. The commissioner shall certify monthly that portion of the fund that is transferred to the Iowa plan fund under section 99E.10 and shall cause that portion to be transferred to the Iowa plan fund of the state. The commissioner shall certify before the twentieth of each month that portion of the fund resulting from the previous month's sales to be transferred to the Iowa plan fund.

3. The auditor of state or a certified public accounting firm appointed by the auditor shall conduct quarterly and annual audits of all accounts and transactions of the lottery and other special audits as the auditor of state, the general assembly, or the governor deems necessary. The auditor or a designee conducting an audit under this chapter shall have access and authority to examine any and

all records of licensees necessary to determine compliance with this chapter and the rules adopted pursuant to this chapter.

87 Acts, ch 231, §3 SF 515
Subsection 2 amended

99E.31 Appropriations—1986 fiscal year.

1. This division shall be construed broadly in order to facilitate achievement of its purposes. The general assembly finds and declares that a continuing need for programs to alleviate and prevent adverse economic conditions exists in this state, and that it is accordingly necessary to create and expand businesses, including agricultural businesses, to strengthen and revitalize the state's economy. In order to provide the means and incentives for encouragement, development, and assistance of industrial, commercial, and agricultural enterprises, specific accounts are created within the Iowa plan fund. The treasurer of state shall, for the fiscal year beginning July 1, 1985 and ending June 30, 1986, make allotments of the moneys within the Iowa plan fund for economic development created in section 99E.10 to separate accounts within that fund as follows:

a. The first five million two hundred seventeen thousand dollars to the "Jobs Now Capitals" account.

b. After the allotment in paragraph "a", ten million dollars to the "Community Economic Betterment" account, seven million fifty thousand dollars to the "Jobs Now" account, and eleven million dollars to the "Education and Agriculture Research and Development" account.

c. After the allotments have been made under paragraphs "a" and "b", the excess is allotted equally to the community economic betterment account and to the "Surplus" account.

d. Before the treasurer makes the allotments under paragraphs "a", "b", and "c", the treasurer shall repay to the general fund the sum of one million twenty thousand dollars which was appropriated for the fiscal year beginning July 1, 1985 from the general fund to the department of general services for capitol building restoration and major repairs, and shall repay to the general fund the sum of five million two hundred fifty thousand dollars which was appropriated for the fiscal period beginning July 1, 1985 and ending June 30, 1989 from the general fund to the department of general services for the engineering, planning and construction of a new state historical building under 1984 Iowa Acts, chapter 1316, section 4.

2. a. There is appropriated from the allotment made to the community economic betterment account under subsection 1 for the fiscal year beginning July 1, 1985 and ending June 30, 1986 to the Iowa development commission the amount in that account, or so much thereof as may be necessary, to be used for the following purposes:

(1) Principal buy-down program to reduce the principal of a business loan.

(2) Interest buy-down program to reduce the interest on a business loan.

(3) Grants and loans to aid in economic development.

(4) Site development or infrastructure costs directly related to a project resulting in new employment.

(5) Road construction projects.

(6) Funds for guaranteeing business loans by local development corporations as described in section 28.29.

b. Only a political subdivision of the state may apply to receive funds for any of the above purposes. The political subdivision shall make application to the department of economic development specifying the purpose for which the funds will be used. In ranking applications for funds, the department shall consider a variety of factors including, but not limited to:

(1) The proportion of local match to be provided.

(2) The proportion of private contribution to be provided, including the involvement of financial institutions.

- (3) The total number of jobs to be created or retained.
- (4) The size of the business receiving assistance. The department shall award more points to small businesses as defined by the United States small business administration.
- (5) The potential for future growth in the industry represented by the business being considered for assistance.
- (6) The need of the business for financial assistance from governmental sources. More points shall be awarded to a business which the department determines that governmental assistance is most necessary to the success of the project.
- (7) The quality of the jobs to be created. In rating the quality of the jobs the department shall award more points to those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, or have other related factors.
- (8) The level of need of the political subdivision.
- (9) The impact of the proposed project on the economy of the political subdivision.

c. The department shall not provide more than one million dollars for any project, unless at least two-thirds of the members of the economic development board vote for providing more. However, after the first ten million dollars in the community economic betterment account have been provided to political subdivisions, the amount that may be provided by the department for a project from additional moneys credited to that account is not subject to the one million dollar limitation.

d. An eligible road construction project is one involving highway improvements which support and assist economic development.

The commission shall take applications from state, city, or county government entities for road construction projects. The commission shall prioritize the projects and determine which projects shall be funded. However, the approval of the department of transportation is necessary for planning, design, construction and maintenance and other activities as provided in section 307.24. The commission shall make the final selection of which projects will be funded. Matching funds on a dollar-for-dollar basis for each project funded shall be required. The source of the matching funds shall be determined by the type of project. Thus a match from the primary road fund is required for a project involving a primary road. The department of transportation does not have the right to reject a project for which a match of primary road funds is required. If the department of transportation disapproves of a project for which a match of primary road funds is required, the reasons shall be supplied to the applicant and commission. But the commission may still approve such project, and once approved, matching funds are to be provided.

In prioritizing the road construction projects and determining which shall be funded, the commission shall consider the economic benefits of the project to the local community and the state as a whole, including but not limited to the number of direct and indirect jobs created.

3. There is appropriated from the allotment made to the jobs now account under subsection 1 for the fiscal year beginning July 1, 1985 and ending June 30, 1986 to the following funds, agencies, boards or commissions the following amounts, or so much thereof as may be necessary, to be used for the following purposes:

a. To the state conservation commission the sum of two million dollars for the development of parks, recreation areas, forest, fish and wildlife areas, and natural areas, and for related technical services for carrying out these projects. Not more than five hundred thousand dollars shall be set aside to match private funds available for the acquisition of natural areas with unique or unusual features. Not more than four hundred thousand dollars shall be set aside for the acquisition of

land for expansion or development of state forests, parks and recreation areas, and state fish and wildlife areas. Not more than seven hundred fifty thousand dollars shall be set aside for use in providing grants-in-aid to county conservation boards for carrying out acquisition and development projects as provided in chapter 111A. Any of the above funds can be matched with any available federal funds or with any available federal or local funds in the case of grants-in-aid to county conservation boards.

b. To the energy policy council the sum of one hundred fifty thousand dollars to provide for energy management auditing services and administrative costs associated with the establishment of lease-purchase conservation projects for state buildings. The appropriation under this paragraph is contingent upon the passage and enactment into law of 1985 Iowa Acts, chapter 55.

c. To the Iowa product development fund the sum of two million dollars for the purposes provided in section 28.89.

d. To the office for planning and programming the sum of two hundred fifty thousand dollars for the purposes of the community cultural grants program established under 1983 Iowa Acts, chapter 207, section 92.

e. To the Iowa development commission the sum of two million six hundred fifty thousand dollars for the purposes designated as follows:

- (1) Business incubators.
- (2) Satellite centers under section 28.101.
- (3) Federal procurement offices.
- (4) Tourism and marketing.
- (5) Iowa main street program.

(6) Foreign trade for which up to fifty thousand dollars may be used for cooperative trade activities in conjunction with the farm progress show.

4. There is appropriated from the allotment made to the education and agriculture research and development account under subsection 1 for the fiscal year beginning July 1, 1985 and ending June 30, 1986 to the following funds, agencies, boards or commissions the following amounts, or so much thereof as may be necessary, to be used for the following purposes:

a. To the Iowa development commission and the Iowa department of economic development the sum of ten million dollars to be allocated by the Iowa development commission or the Iowa department of economic development for economic development and research and development purposes at an institution of higher education under the control of the state board of regents or at an independent college or university of the state. The Iowa development commission or the Iowa department of economic development shall allocate for the fiscal year beginning July 1, 1985 the first five hundred thousand dollars, for the fiscal year beginning July 1, 1986 the first three million seven hundred fifty thousand dollars, and for the fiscal year beginning July 1, 1987 and for each succeeding fiscal year the first four million two hundred fifty thousand dollars to the Iowa State University of science and technology for agricultural biotechnology research and development. From the money allocated to the Iowa State University of science and technology for agricultural biotechnology research and development the amount of fifty thousand dollars for each of the fiscal years beginning July 1, 1986 and July 1, 1987 shall be used to develop a program in bioethics for research at the university. This program should address socio-economic and environmental implications of biotechnology research.

(1) The institutions under control of the state board of regents may present proposals to the state board of regents for the use of the funds. The proposals may include, but are not limited to, endowing faculty chairs, conducting studies and research, establishing centers, purchasing equipment, and constructing facilities in the areas of entrepreneurial studies, foreign language translation and interpretation, management development, genetics, molecular biology, laser science and engineering, biotechnology, third crop development, and value-added projects.

The proposals shall include certification from the institution, college or university that it will receive from other sources an amount equal to the amount requested in the proposal. The state board of regents shall, for institutions under its control, determine the specific proposals for which it requests funding and submit them to the Iowa development commission or the Iowa department of economic development. An independent college or university shall submit requests directly to the Iowa development commission or the Iowa department of economic development.

(2) The Iowa development commission or the Iowa department of economic development shall disburse to the regents' institutions or an independent college or university the moneys for the various proposals requested unless the commission or department disapproves of a specific proposal as inconsistent with the plan for economic development for this state. The applicants may submit additional proposals for those not approved by the Iowa development commission or the Iowa department of economic development. Those funds allocated by the Iowa development commission or the Iowa department of economic development under this paragraph that are not expended by the institution of higher education shall not revert to the commission or department. The Iowa development commission and the Iowa department of economic development shall consult with the Iowa high technology council in making grants under this paragraph.

(3) In addition to the other proposals mentioned, an institution under the control of the state board of regents, a merged area school, or an independent college or university in the state may apply for a grant for an applied research project. An applied research project is limited to specific research or the testing of an idea, process, or product to determine the potential for feasible commercial applications. Institutions under the control of the state board of regents, the merged area schools, and the independent colleges and universities shall submit their proposals directly to the Iowa high technology council. The Iowa high technology council shall receive and evaluate the applied research project proposals from the merged area schools, independent colleges and state universities and make recommendations to the Iowa department of economic development. Applied research project proposals may be in, but are not limited to, the following areas of research:

- (a) Management development.
- (b) Biotechnology.
- (c) Microelectronics.
- (d) Genetics.
- (e) Molecular biology.
- (f) Laser science.
- (g) Third crop development.
- (h) Productivity enhancement/process controls.
- (i) Energy alternatives.

(4) In the ranking of applied research project proposals, the Iowa department of economic development shall consider all of the following:

- (a) Level of private sector support, assistance, or participation in the project.
- (b) The commercial feasibility of the project.
- (c) The potential of the commercial feasibility of the project to diversify the economic base of Iowa.
- (d) The technical feasibility of the project.
- (e) Matching funds from other sources.

Funded applied research projects shall be given priority by the Iowa department of economic development in receiving product development funds or other department services or assistance designed to promote or encourage the development of new products or new businesses; by the state board of regents in receiving admission into campus incubators, assistance from the small business development centers, or other services or assistance designed for developing new products

or new businesses; and by the community colleges in receiving small business job training programs or other assistance designed for developing new products or new businesses.

b. To the Iowa college aid commission for the summer institute program established pursuant to this paragraph the sum of one million dollars. Institutions of higher education in the state may submit proposals to the council for postsecondary education for eight-week summer institute programs to upgrade the skills of Iowa teachers in the subject areas of math, science, foreign languages and such other areas as the department of public instruction has indicated a teaching shortage exists. The proposals shall provide for the institutional reimbursement for the costs of instruction, materials, and room and board for the participants as well as for a weekly stipend of one hundred fifty dollars per week for each participant. The council for postsecondary education shall select the institutions at which the summer institutes shall be conducted. The council for postsecondary education in consultation with the Iowa college aid commission shall establish the criteria for the selection of the teachers to participate in the programs.

5. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1985 and ending June 30, 1986 to the following council, office, and departments the following amounts, or so much thereof as may be necessary, to be used for the following purposes:

a. To the department of public defense the sum of two hundred forty-three thousand thirty-five dollars for the architect, engineering, equipment and construction of the armory in Carroll.

b. To the department of public defense for the purposes and in the amounts designated as follows:

(1) To connect the armory in Cedar Rapids to the city water and sewer lines and for related architect and engineering services the sum of two hundred thirty-four thousand three hundred thirty-five dollars.

(2) For the architect, engineering, equipment and construction of an addition to the armory in Cedar Rapids the sum of two hundred sixty-four thousand sixty-four dollars.

c. To the department of public instruction the sum of one million dollars to be allocated to the merged area schools filing requests with the department for the purchase of equipment. The department of public instruction shall allocate moneys to an area school based upon the ability of the area school to provide matching contributions, either in-kind or financial, and the potential for creation of jobs and economic development. The maximum grant to an area school shall not exceed two hundred fifty thousand dollars.

d. To the office of the governor the sum of one hundred thousand dollars or so much as may be needed for a feasibility study of costs and benefits of a joint telecommunications partnership to be entered into between the state and private firms. The study shall be contracted out to a private firm in the state which is experienced in telecommunications and which has the capability to analyze the technical and economic potential and feasibility of a telecommunications satellite and fiber optics system with state and worldwide capability. The study shall be developed to insure input from the telephone, banking, insurance, television, and other business sectors in the state as well as from the educational community.

e. To the Iowa family farm development authority the sum of three million dollars for the agricultural loan assistance program provided in section 175.35. If the full appropriation under this paragraph is not committed for grants as provided in section 175.35, the funds not committed shall be transferred from the jobs now capitals account to the accounts specified in subsection 1, paragraph "b". The funds so transferred are considered as allotments made to those other accounts for the fiscal year beginning July 1, 1985.

f. To the Iowa State University of science and technology the sum of two hundred fifty thousand dollars for allocation to the center for industrial research and service for a hazardous waste research program and an ethanol and corn starch project. Of the amount allocated under this paragraph, the sum of fifty thousand dollars shall be used for an ethanol and corn starch project. The hazardous waste research program shall be created within the civil engineering department. This research program shall concentrate its efforts in the cleanup of industrial hazardous waste in the state with special emphasis upon new waste disposal techniques and applications. The center for industrial research and service shall administer the research funds and report to the general assembly on the program's progress and result.

g. To the legislative council for the use of the world trade advisory committee for the period beginning on June 5, 1986, and ending June 30, 1986, the sum of one hundred twenty-five thousand dollars, or so much thereof as is necessary, to pay expenses of the members of the committee and other expenses approved by the committee. Any moneys expended by the committee which were paid from the general fund of the state during the period beginning on January 1, 1986 and ending on June 5, 1986, shall be repaid to the general fund of the state not later than June 30, 1986, from this appropriation. Any moneys not expended by the committee by June 30, 1986 shall not revert and shall be available for use by the committee during the next fiscal year.

6. If the moneys to be allotted to the economic betterment account, jobs now account or education and agriculture research and development account are less than the amount specified in subsection 1, paragraph "b", the moneys appropriated to the funds, agencies, boards or commissions for the purposes specified in subsection 2, 3 or 4, as applicable, shall be reduced by the same percentage decrease in the appropriate allotment.

7. The moneys appropriated in subsections 2, 3, 4 and 5 shall remain in the appropriate account of the Iowa plan fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. The treasurer shall withdraw this amount from the amount appropriated to that entity and remit it to the entity not earlier than thirty days after receipt of the request. Notwithstanding section 8.33, moneys remaining of the appropriations made from any of the accounts within the Iowa plan fund on June 30, 1986 shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

8. The agency, board, commission, or overseer of the fund to which moneys are appropriated under this section shall make every effort to maximize the impact of these moneys through government and private matching funds.

87 Acts, ch 115, §18 SF374; 87 Acts, ch 228, §28 HF 355; 87 Acts, ch 231, §4, 5 SF 515

Subsection 2, paragraph b stricken and rewritten and item veto applied

Subsection 4, paragraph a amended

Subsection 4, paragraph a, NEW subparagraphs (3) and (4)

Subsection 5, paragraph f amended

Former unnumbered paragraphs lettered or numbered.

99E.32 Appropriations—1987, 1988, 1989, and 1990 fiscal years.

1. The treasurer of state shall, for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, make allotments of the moneys within the Iowa plan fund for economic development created in section 99E.10 to separate accounts within that fund as follows:

a. In the fiscal year beginning July 1, 1986 the first three million four hundred thirty-eight thousand dollars, in the fiscal year beginning July 1, 1987 the first six million six hundred seventy-five thousand dollars, in the fiscal year beginning July 1, 1988 the first three million seven hundred fifty thousand dollars and in the

fiscal year beginning July 1, 1989 the first three million seven hundred fifty thousand dollars to the jobs now capitals account.

b. In each of the four fiscal years after the allotment in paragraph "a", ten million dollars to the community economic betterment account; for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, eight million five hundred fifty thousand dollars, eight million three hundred seventy-five thousand dollars, seven million nine hundred thousand dollars, and seven million nine hundred thousand dollars, respectively, to the jobs now account; and for the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989, twelve million five hundred thousand dollars, seven million four hundred thousand dollars, eleven million five hundred thousand dollars, and eleven million two hundred fifty thousand dollars, respectively, to the education and agriculture research and development account.

c. After the allotments have been made under paragraphs "a" and "b" in each of the fiscal years, the excess is allotted equally to the community economic betterment account and to the surplus account.

2. There are appropriated moneys in the community economic betterment account for each of the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989 to the Iowa department of economic development to be used for the following purposes in the amounts, or so much thereof as may be necessary, as provided in section 99E.33:

- a. Principal buy-down program to reduce the principal of a business loan.
- b. Interest buy-down program to reduce the interest on a business loan.
- c. Loans to aid in economic development.
- d. Site development or infrastructure costs directly related to a project resulting in new employment.
- e. Road construction projects.
- f. Funds for guaranteeing business loans by local development corporations as described in section 28.29.
- g. Grants to economic development projects, as defined in section 99E.10, subsection 2, if at least fifty percent of the total cost of the project is paid from sources other than the Iowa plan fund. If a project involves purchase or improvement of real property, a grant may be made only if the property is located in the state of Iowa.
- h. For the fiscal years beginning on July 1, 1986 and July 1, 1987 the department shall establish a pilot program entitled the new business opportunity program to provide financial and technical assistance to emerging businesses and industries that expand and diversify the state's economic base. Assistance may be in any form authorized under the community economic betterment account and the department may allocate for each of those fiscal years up to one million dollars of the account's funds for the pilot program.

The conditions, criteria and limitations specified in section 99E.31, subsection 2 apply to the providing of moneys under this subsection.

3. There are appropriated moneys in the jobs now account for each of the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989 to the following funds, agencies, boards or commissions in the amounts, or so much thereof as may be necessary, as provided in section 99E.33 to be used for the following purposes:

- a. To the natural resource commission for the purposes designated in section 99E.31, subsection 3, paragraph "a". For the fiscal year beginning July 1, 1986, the amount appropriated is two million five hundred thousand dollars. For the fiscal year beginning July 1, 1987, the amount appropriated is two million dollars.
- b. To the Iowa product development fund for the purposes provided in section 28.89. For the fiscal year beginning July 1, 1987, the amount appropriated is one million five hundred thousand dollars.

c. To the department of cultural affairs for the purposes designated in section 99E.31, subsection 3, paragraph "d". For the fiscal year beginning July 1, 1987, the amount appropriated is six hundred seventy-five thousand dollars.

d. To the Iowa department of economic development for the purposes designated in section 99E.31, subsection 3, paragraph "e". For the fiscal year beginning July 1, 1986, the amount appropriated is two million six hundred thousand dollars. For the fiscal year beginning July 1, 1987, the amount appropriated is two million fifty thousand dollars to be used for the purposes and in the amounts as follows:

(1) Satellite centers under section 28.101, one million one hundred twenty-five thousand dollars of which fifty thousand dollars shall be used by the department to hire a rural development coordinator; forty-five thousand dollars for an informational referral center; and ninety-five thousand dollars for model rural development projects.

(2) Federal procurement offices, one hundred thousand dollars.

(3) Iowa main street program, two hundred seventy-five thousand dollars.

(4) Technical assistance for businesses for purposes of the federal small business innovation research grants program, two hundred fifty thousand dollars of which fifty thousand dollars shall be expended to develop and operate a small business information center.

(5) Business incubators, three hundred thousand dollars. The funds shall be used to provide for operations of existing incubators and for the establishment of at least one new incubator in the fiscal year. The department will award grants to universities, community colleges, and local communities on an annual basis. In awarding the grants, the department shall consider the incubator's plan to become self-sufficient from the need for further grants within three years of its start-up. Future grants shall be contingent upon how the incubator is succeeding in becoming self-sufficient. The local community, university, or college is required to match the state's grant on a dollar for dollar basis.

e. For the fiscal year beginning July 1, 1986 only, the sum of two hundred thousand dollars for the targeted small business loan guarantee program established pursuant to section 220.111.

f. For the fiscal years beginning July 1, 1986 and July 1, 1987 only, to the Iowa conservation corps account the sum of one million dollars and seven hundred fifty thousand dollars, respectively. Of the funds appropriated under this paragraph, five hundred thousand dollars shall be used for a summer jobs program for young adults, as a part of the Iowa youth corps* and designed to provide part-time public service employment to work on conservation-oriented projects.

g. For the fiscal years beginning July 1, 1988 and July 1, 1989 only, to the Iowa department of economic development, one million dollars for purposes of administration of the "young adult program" of the Iowa conservation corps, established in section 15.225.

h. For the fiscal year beginning July 1, 1987 only, to the advance account of the area school job training fund established in section 280C.6, one million dollars.

i. For the fiscal year beginning July 1, 1987 only, to the department of agriculture and land stewardship the sum of three hundred thousand dollars for developing pilot public/private partnerships to assist Iowa producers of agricultural products in the promotion, marketing, and selling of agricultural products to local and regional markets.

j. For the fiscal year beginning July 1, 1987 only, to the department of agriculture and land stewardship the sum of one hundred thousand dollars, or so much as is necessary, to provide a grant to the organizers from the 1988 world ag expo in the Amana colonies.

4. There are appropriated moneys in the education and agriculture research and development account for each of the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988, and July 1, 1989 to the following funds, agencies, boards or

commissions in the amounts, or so much thereof as may be necessary, as provided in section 99E.33 to be used for the following purposes:

a. To the Iowa college aid commission for the forgivable loan program established in sections 261.71 to 261.73. For the fiscal year beginning July 1, 1986, the amount appropriated is seven hundred fifty thousand dollars. Notwithstanding subsection 7, any moneys not expended under this paragraph by June 30, 1987 shall not be used for purposes of this paragraph but shall be transferred and used for the purposes described in paragraph "c" for the fiscal year beginning July 1, 1987. For the fiscal year beginning July 1, 1987, no amount is appropriated.

b. To the Iowa department of economic development for the purposes and under the conditions specified in section 99E.31, subsection 4, paragraph "a". For the fiscal year beginning July 1, 1986, the amount appropriated is ten million seven hundred fifty thousand dollars. For the fiscal year beginning July 1, 1987, the amount appropriated is seven million dollars of which five hundred thousand dollars shall be allocated to the Iowa State University of science and technology for the national center for food and industrial agricultural product development; and two hundred fifty thousand dollars shall be allocated to the University of Northern Iowa for the decision making science institute.

c. To the Iowa college aid commission for the purposes and under the conditions specified in section 99E.31, subsection 4, paragraph "b". For the fiscal year beginning July 1, 1987, no amount is appropriated. However, the funds transferred under paragraph "a" are available for use under this paragraph for the fiscal year beginning July 1, 1987.

d. For the fiscal years beginning July 1, 1987 and July 1, 1988 only, to the Iowa peace institute, the sum of two hundred fifty thousand dollars each fiscal year for salaries, support, and maintenance provided, and to the extent that, the appropriations are matched dollar for dollar by the Iowa peace institute. The peace institute shall not use any of the state funds for the construction or purchase of real property.

e. For the fiscal years beginning July 1, 1987, July 1, 1988, and July 1, 1989 to the Iowa State University of science and technology, the sum of one hundred fifty thousand dollars for each fiscal year for allocation to the Iowa State University water resource research institute for a subsurface water and nutrient management system. This research shall concentrate its efforts on providing optimum soil water table level throughout the growing season, reduction of nitrates in Iowa's surface and subsurface waters, reduction of Iowa's dependency on subsurface water for irrigation, and increasing productivity of selected Iowa soils for selected crops. The Iowa State University water resource research institute shall administer the research funds and report to the general assembly by February 1 of each year, on the program's progress and results.

5. a. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for each of the fiscal years beginning July 1, 1986, July 1, 1987, July 1, 1988 and July 1, 1989 to the department of education the sum of one million dollars for the purposes and under the conditions specified in section 99E.31, subsection 5, paragraph "c".

b. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of public safety for the acquisition and interface with a fingerprint computer the sum of four hundred thousand dollars. There is established an automated fingerprint identification system (AFIS) computer committee. This committee shall have the authority to prepare and implement guidelines, rules, and regulations pertaining to the placement, use, and access to the AFIS computer and any remote terminal designed to interface with the main computer located at the department of public safety. The AFIS committee will be chosen for two-year terms with four sheriffs chosen by the Iowa state sheriffs and deputies

association and four chiefs of police chosen by the Iowa police executive forum. The director of public safety, or the designee, will be chairperson of the AFIS committee.

After the initial committee is selected effective July 1, 1986, new members will serve staggered terms of two years. Beginning July 1, 1988, the Iowa state sheriffs and deputies association and the Iowa police executive forum will each choose two new members, who will make up the nine member AFIS committee. Thereafter, the staggered terms will take effect between the sheriffs' representatives and the police chiefs' representatives. Nothing herein shall limit the number of terms any one person may serve.

c. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal years beginning July 1, 1986 and July 1, 1987 to the Iowa State University of science and technology for funding for the small business development centers the sum of seven hundred thousand dollars and eight hundred twenty-five thousand dollars, respectively.

d. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the Iowa State University of science and technology the sum of one hundred thousand dollars for allocation to the center for industrial research and service for the hazardous waste research program.

e. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of human services the sum of three hundred fifty thousand dollars for the purchase of computer equipment for establishing a child support recovery central clearinghouse.

f. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of justice the sum of three hundred twenty-five thousand dollars for office automation and related personnel costs. The moneys appropriated under this paragraph which have not been expended by the end of the fiscal year shall not revert under section 8.33 or any other provision of law.

g. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the department of public defense for the architect, engineering, equipment and construction of the armory in Mason City the sum of four hundred thirty-eight thousand dollars.

h. There is appropriated from the allotment made to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1986 to the legislative council for the use of the world trade advisory committee the sum of one hundred twenty-five thousand dollars, or so much thereof as is necessary, to pay expenses of the members of the committee and other expenses approved by the committee. Notwithstanding subsection 7, any moneys not expended under this paragraph by June 30, 1987 shall be transferred for the fiscal year beginning July 1, 1987 to the department of economic development for a labor management council for which the department may contract out.

i. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1987 to the Iowa department of economic development the sum of two million dollars for the establishment of welcome centers as provided in sections 15.271 and 15.272. Of the amounts appropriated, sixty thousand dollars shall be used for the establishment of rural centers to be located in or near communities with populations of five thousand or less. Not more than twenty thousand dollars shall be expended for each center. The local communities are required to equally match state funds.

j. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for construction, equipment, renovation, and other costs associated with buildings in the capitol complex the sum of two million seven

hundred fifty thousand dollars for each of the fiscal years beginning July 1, 1987; July 1, 1988; and July 1, 1989 to the department of general services. Of the total funds appropriated, seven hundred fifty thousand dollars shall be utilized to pay costs of equipping the new historical building and the costs of moving exhibits into that building; and the remaining funds shall be used for renovation and remodeling of buildings in the capitol complex.

k. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1987 to the department of public defense for the purpose of the armory in Algona the sum of fifty thousand dollars.

l. There is appropriated from the allotment to the jobs now capitals account under subsection 1 for the fiscal year beginning July 1, 1987 to the department of public defense for the purpose of the armory in Denison the sum of fifty thousand dollars.

6. If the moneys to be allotted in a fiscal year to the community economic betterment account, jobs now account or education and agriculture research and development account is less than the amount specified for that fiscal year in subsection 1, paragraph "b" the moneys appropriated for that fiscal year to the funds, agencies, boards or commissions for the purposes specified in subsection 2, 3 or 4, as applicable, shall be reduced by the same percentage decrease in the appropriate allotment.

7. The moneys appropriated in subsections 2, 3, 4 and 5 shall remain in the appropriate account of the Iowa plan fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the Iowa plan fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

8. The agency, board, commission, or overseer of the fund to which moneys are appropriated under this section shall make every effort to maximize the impact of these moneys through government and private matching funds.

87 Acts, ch 228, §29 HF 355; 87 Acts, ch 231, §6-12, 21 SF 515

*Iowa youth corps repealed by 87 Acts, ch 101, §3 HF 379

Subsection 1, paragraphs a and b amended

Subsection 2, NEW paragraph h amended

Subsection 3 amended

Subsection 3, NEW paragraphs h, i and j

Subsection 4 amended

Subsection 5, paragraphs c and h amended

Subsection 5, NEW paragraphs i, j, k and l

Subsection 7 amended

CHAPTER 100

STATE FIRE MARSHAL

100.19 Fire hazard analyses.

1. As used in this section, unless the context otherwise requires, "*hazard analysis*" means an analytical system for the evaluation of the hazard presented by a product in a specific end use, through consideration of fire scenarios, evaluation of the fire environment of each scenario, and the evaluation on the effect of the fire environment on the given product.

2. The state fire marshal shall establish a data filing system utilizing the available hazard analyses of materials in the fire environment. The data system shall provide design information and guidance regarding the products used in construction and occupancy.

The state fire marshal shall utilize state-of-the-art procedures adopted after consideration of the procedures of third-party standards-making organizations, government agencies, and building code authorities, including but not limited to the national institute of building science, the center for fire research of the national bureau of standards, and the national fire protection association.

3. In the development of the filing system, the state fire marshal shall encourage manufacturers of building products and building contents to perform a hazard analysis of their products.

4. The state fire marshal shall report the availability of hazard analyses data to the general assembly by January 1, 1988 and shall implement the data filing system required by this section by July 1, 1990.

87 Acts, ch 45, §1 SF 292
NEW section

100.36 Toxic extinguishers prohibited—exception. Repealed by 87 Acts, ch 10, §1. HF 194

CHAPTER 103A

STATE BUILDING CODE

103A.3 Definitions.

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

1. "*Commissioner*" means the state building code commissioner created by this chapter.
2. "*Council*" means the state building code advisory council created by this chapter.
3. "*Board of review*" or "*board*" means the state building code board of review created by this chapter.
4. "*Governmental subdivision*" means any city, county, or combination thereof.
5. "*Building regulations*" means any law, bylaw, rule, resolution, regulation, ordinance, or code or compilation enacted or adopted, by the state or any governmental subdivision, including departments, boards, bureaus, commissions or other agencies, relating to the construction, reconstruction, alteration, conversion, repair or use of buildings and installation of equipment therein. The term shall not include zoning ordinances or subdivision regulations.
6. "*Local building regulations*" means building regulations adopted by a governmental subdivision.
7. "*Local building department*" means an agency of any governmental subdivision charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.
8. "*State agency*" means a state department, board, bureau, commission, or agency of the state of Iowa.
9. "*Building*" means a combination of any materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals or property. The word "building" includes any part of a building unless the context clearly requires a different meaning.
10. "*Structure*" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner except transmission and distribution structures of public utilities. The word "structure" includes any part of a structure unless the context clearly requires a different meaning.

11. *“Equipment”* means plumbing, heating, electrical, ventilating, conditioning, refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical facilities or installations.

12. *“Factory-built structure”* means any structure which is, wholly or in substantial part, made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation, on a building site. *“Factory-built structure”* includes the term *“mobile home”* as defined in section 135D.1.

13. *“Manufacture”* is the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semi-finished materials.

14. *“Installation”* means the assembly of factory-built structures on site and the process of affixing factory-built structures to land, a foundation, footings, or an existing building.

15. *“Construction”* means the construction, erection, reconstruction, alteration, conversion, repair, equipping of buildings, structures or facilities, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

16. *“Owner”* means the owner of the premises, a mortgagee or vendee in possession, an assignee of rents, or a receiver, executor, trustee, lessee or other person in control of a building or structure.

17. *“State building code”* or *“code”* means the state building code provided for in section 103A.7.

18. *“Performance objective”* establishes design and engineering criteria without reference to specific methods of construction.

19. *“Ground support system”* means any device or combination of devices placed beneath a mobile home and used to provide support.

20. *“Ground anchoring system”* means any device or combination of devices used to securely anchor a mobile home to the ground.

21. *“Tiedown system”* means a ground support system and a ground anchoring system used in concert to provide anchoring and support for a mobile home.

22. *“Permanent site”* means any lot or parcel of land on which a mobile home used as a dwelling or place of business, is located for ninety consecutive days except a construction site when the mobile home is used by a commercial contractor as a construction office or storage room.

23. *“New construction”* means construction of buildings and factory-built structures which is commenced on or after January 1, 1978. Notwithstanding the definition in subsection 15 of this section, when the term *“new construction”* appears in this chapter, *“construction”* is limited to the erection, reconstruction or conversion of a building or factory-built structure and additions to buildings or factory-built structures and does not include renovations or repairs.

24. *“State historic building code”* means the alternative building regulations and building standards for certain historic buildings provided for in section 103A.41.

25. *“Out-of-state contractor”* means a person whose principal place of business is in another state, and which contracts to perform construction, installation, or any other work covered by this chapter, in this state.

87 Acts, ch 60, §3 HF 394
NEW subsection 25

103A.12 Adoption and withdrawal—procedure.

The state building code shall be applicable in each governmental subdivision of the state in which the governing body has adopted or enacted a resolution or ordinance accepting the applicability of the code and shall have filed a certified copy of the resolution or ordinance in the office of the commissioner and in the office of the secretary of state. The state building code shall become effective in the governmental subdivision upon the date fixed by the governmental subdivision

resolution or ordinance, if the date is not more than six months after the date of adoption of the resolution or ordinance.

A governmental subdivision in which the state building code is applicable may by resolution or ordinance, at any time after one year has elapsed since the code became applicable, withdraw from the application of the code, if before the resolution or ordinance is voted upon, the local governing body holds a public hearing after giving not less than four nor more than twenty days' public notice, together with written notice to the commissioner of the time, place, and purpose of the hearing. A certified copy of the vote of the local governing body shall be transmitted within ten days after the vote is taken to the commissioner and to the secretary of state for filing. The resolution or ordinance shall become effective at a time to be specified in it, which shall be not less than one hundred eighty days after the date of adoption. Upon the effective date of the resolution or ordinance, the state building code shall cease to apply to the governmental subdivision except that construction of any building or structure pursuant to a permit previously issued shall not be affected by the withdrawal.

A governmental subdivision which has withdrawn from the application of the state building code may, at any time thereafter, restore the application of the code in the same manner as specified in this section.

87 Acts, ch 43, §2 SF 265
Unnumbered paragraph 2 amended

103A.24 Bond for out-of-state contractors.

An out-of-state contractor, before commencing a contract in excess of five thousand dollars in value in Iowa, shall file a bond with the office of the secretary of state, with sureties to be approved by the secretary of state's office. The bond shall be in the sum of the greater of the following:

1. One thousand dollars.
2. Five percent of the contract price. Release of the bond shall be conditioned upon the payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and related fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract. If at any time during the term of the bond the department of revenue and finance determines that the amount of the bond is not sufficient to cover the tax liabilities accruing to the state of Iowa or its subdivisions, the department shall require the bond to be increased by an amount the department deems sufficient to cover the tax liabilities accrued and to accrue under the contract. The department shall adopt rules for the collection of the forfeiture. Notice shall be provided to the surety and to the contractor. Notice to the contractor shall be mailed to the contractor's last known address and to the contractor's registered agent for service of process, if any, within the state. The contractor or surety shall have the opportunity to apply to the director of revenue and finance for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the department of revenue and finance finds that the contractor has failed to pay the total of all taxes payable, the department shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond. The surety shall not have standing to contest the amount of any taxes payable. For purposes of this section "*taxes payable*" means all tax, penalties, interest, and fees that the department has previously determined to be due to the state or a subdivision of the state by assessment or in an appeal of an assessment, including contributions to the unemployment compensation insurance system.

87 Acts, ch 60, §4 HF 394
NEW section

103A.25 to 103A.29 Reserved.

CHAPTER 106

WATER NAVIGATION REGULATIONS

106.2 Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

1. "*Authorized emergency vessel*" means any vessel which is designated or authorized by the commission for use in law enforcement, search and rescue, and disaster work.

2. "*Boat livery*" means a person who holds a vessel for hire, renting, leasing, or chartering including hotels, motels, or resorts which furnish a vessel to guests as part of the services of the business.

3. "*Certificate*" means a certificate of title.

4. "*Commission*" means the natural resource commission.

5. "*Dealer*" means a person who engages in whole or in part in the business of buying, selling, or exchanging vessels either outright or on conditional sale, bailment, lease, security interest, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yachtbroker is a dealer.

6. "*Department*" means the department of natural resources.

7. "*Director*" means the director of the department or the director's designee.

8. "*Established place of business*" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

9. "*Farm pond*" means a body of water wholly on the lands of a single owner, or a group of joint owners, which does not have any connection with any public waters and which is less than ten surface acres.

10. "*Inboard*" means a vessel in which the engine is located internally, the propulsion system is rigidly attached to the engine, and the propulsion mechanism is within the confines of the vessel's extreme length and beam.

11. "*Inboard-outdrive*" means a vessel in which the power plant or engine is located inside of the vessel and the propulsion mechanism is located outside of the transom.

12. "*Inflatable vessel*" means a vessel which achieves and maintains its intended shape and buoyancy by inflation.

13. "*Lienholder*" means a person holding a security interest.

14. "*Manufacturer*" means a person engaged in the business of manufacturing or importing new and unused vessels, or new and unused outboard motors, for the purpose of sale or trade.

14A. "*Manufacturer*" means every person engaged in the business of constructing or assembling boats of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

15. "*Motorboat*" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, or vessel propelled attached to another craft which is propelled by machinery.

16. "*Navigable waters*" means all lakes, rivers and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

17. "*Nonresident*" means every person who is not a resident of this state.

18. "*Operate*" means to navigate or otherwise use a vessel or motorboat.

19. "*Operator*" means a person who operates or is in actual physical control of a vessel.

20. "*Owner*" means a person, other than a lienholder, having the property right in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a vessel or motorboat subject to an interest in another person,

reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

21. "*Passenger*" means a person carried on board a vessel, including the operator, and anyone towed by a vessel on water skis, surfboards, inner tubes, or similar devices.

22. "*Person*" means an individual, partnership, firm, corporation or association.

23. "*Privately owned lakes*" means any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

24. "*Proceeds*" includes whatever is received when collateral or proceeds are sold, exchanged, collected, or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are cash "*proceeds*". All other proceeds are "*noncash proceeds*".

25. "*Security interest*" means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

26. "*State of principal use*" means the state on whose waters a vessel is used or to be used most during a calendar year.

27. "*Undocumented vessel*" means any vessel which is not required to have, and does not have, a valid marine document issued by the bureau of customs or a foreign government.

28. "*Use*" means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

29. "*Vessel*" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft. The term includes the vessel's motor, spars, sails, and accessories.

30. "*Vessel for hire or commercial vessel*" means a vessel for the use of which a fee of any nature is imposed including vessels furnished as a part of lodge, hotel, or resort services.

31. "*Wake*" means any movement of water created by a vessel which adversely affects the activities of another person who is involved in activities approved for that area or which may adversely affect the natural features of the shoreline.

32. "*Watercraft*" means any vessel which through the buoyance force of water floats upon the water and is capable of carrying one or more persons.

33. "*Waters of this state under the jurisdiction of the commission*" means any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, exempting only farm ponds and privately owned lakes.

34. "*Writing fee*" means the amount paid by the boat owner to the county recorder for handling the transaction.

87 Acts, ch 134, §1, 2 HF 595

See Code editor's note

Striking of former subsections 1 and 16, and enactment of new subsections take effect January 1, 1988; 87 Acts, ch 134, §13 HF 595

NEW subsections

Former subsections 1 and 16 stricken and subsections renumbered to alphabetize

106.5 Registration and identification number.

1. The owner of each vessel required to be numbered by this state shall register it every two years with the county recorder of the county in which the owner resides, or, if the owner is a nonresident, the owner shall register it in the county in which such vessel is principally used. The commission shall have supervisory

responsibility over the registration of all vessels and shall provide each county recorder with registration forms and certificates and shall allocate identification numbers to each county.

The owner of the vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the vessel and shall be accompanied by the appropriate fee, and a writing fee of one dollar. Upon applying for registration the owner shall display a bill of sale, receipt, or other satisfactory proof of ownership as provided by the rules of the commission to the county recorder. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records of the recorder's office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the vessel, the passenger capacity of the vessel and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes and commercial vessels, the registration certificate shall be carried either in the vessel or on the person of the operator of the vessel when in use. In the use of nonpowered sailboats, nonpowered canoes or commercial vessels, the registration certificate may be kept on shore in accordance with rules adopted by the commission. The operator shall exhibit the certificate to a peace officer upon request, or, when involved in a collision or accident of any nature with another vessel or other personal property, to the owner or operator of the other vessel or personal property.

On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On nonpowered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. The registration fees for vessels subject to this chapter are as follows:

- a. For vessels of any length without motor or sail, five dollars.
- b. For motorboats or sailboats less than twelve feet in length, eight dollars.
- c. For motorboats or sailboats twelve feet or more, but less than fifteen feet in length, ten dollars.
- d. For motorboats or sailboats fifteen feet or more, but less than eighteen feet in length, twelve dollars.
- e. For motorboats or sailboats eighteen feet or more, but less than twenty-five feet in length, eighteen dollars.
- f. For motorboats or sailboats twenty-five feet in length or more, twenty-eight dollars.

Every registration certificate and number issued becomes delinquent at midnight April 30 of odd-numbered years unless terminated or discontinued in accordance with this chapter. After January 1 in odd-numbered years, an

unregistered vessel and a renewal of registration may be registered for the two-year registration period beginning May 1 of that year. After January 1 in even-numbered years, unregistered vessels may be registered for the remainder of the current registration period at fifty percent of the appropriate registration fee.

If a timely application for renewal is made, the applicant shall receive the same registration number allocated to the applicant for the previous registration period. If the application for registration for the biennium is not made before May 1 of each odd-numbered year, the applicant shall be charged a penalty of two dollars for each six months, or any portion thereof, the applicant is delinquent. Provided that if a registration is not renewed for two consecutive registration periods, the number of the delinquent registration may be assigned to another person, and upon application for registration by the delinquent registrant, the delinquent registrant shall be assigned a new registration number and shall not be charged any penalties.

4. If a person, after registering a vessel, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the old and new address. If appropriate, the county recorder shall forward all past records of the vessel to the recorder of the county in which the owner resides.

If the name of a person, who has registered a vessel, is changed, the person shall, within ten days, notify the county recorder of the former and new name.

No fee shall be paid to the county recorder for making the changes mentioned in this subsection, unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a writing fee shall be paid to the recorder.

If a registration certificate is lost, mutilated or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to the county recorder.

A fee of one dollar plus a writing fee shall be paid to the county recorder for a duplicate registration certificate.

If a vessel, registered under this chapter, is destroyed or abandoned, the destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after the destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every two years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When the vessel bears the identification required in the documentation, it is exempt from the placement of the identification numbers as required on undocumented vessels. The fee for such registration is twenty-five dollars plus a writing fee.

7. If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of the storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the registration fees plus a writing fee as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel.

8. The registration certificate shall indicate if the vessel is subject to the requirement of a certificate of title and the county from which the certificate of title is issued.

87 Acts, ch 134, §3 HF 595

Subsection 8 takes effect January 1, 1988; 87 Acts, ch 134, §13 HF 595

NEW subsection 8

106.12 Prohibited operation.

1. No person shall operate any vessel, or manipulate any water skis, surfboard or similar device in a careless, reckless or negligent manner so as to endanger the life, limb or property of any person.

2. A person shall not operate any vessel, or manipulate any water skis, surfboard or similar device while under the influence of an alcoholic beverage, marijuana, a narcotic, hypnotic or other drug, or any combination of these substances. However, this subsection does not apply to a person operating any vessel or manipulating any water skis, surfboard or similar device while under the influence of marijuana, or a narcotic, hypnotic or other drug if the substances were prescribed for the person and have been taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, provided there is no evidence of the consumption of alcohol and further provided the medical practitioner has not directed the person to refrain from operating a motor vehicle, any vessel or from manipulating any water skis, surfboard or similar device.

3. No person shall place, cause to be placed, throw or deposit onto or in any of the public waters, ice or land of this state any cans, bottles, garbage, rubbish, and other debris.

4. No person shall operate on the waters of this state under the jurisdiction of the conservation commission any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.

5. No person shall operate a vessel and enter into areas in which search and rescue operations are being conducted or an area affected by a natural disaster unless authorized by the officer in charge of the search and rescue or disaster operation. Any person authorized in an area of operation shall operate the person's vessel at a no wake speed and shall keep clear of all other vessels engaged in the search and rescue or disaster operation. A person who must operate a vessel in a disaster area to gain access or egress from the person's home shall be considered an authorized person by the officer in charge.

6. No owner or operator of any vessel propelled by a motor of more than six horsepower shall permit any person under twelve years of age to operate such vessel except when accompanied by a responsible person of at least eighteen years of age who is experienced in motorboat operation.

7. A person shall not operate watercraft in a manner which unreasonably or unnecessarily interferes with other watercraft or with the free and proper navigation of the waters of the state. Anchoring under bridges, in a heavily traveled channel, in a lock chamber, or near the entrance of a lock constitutes such interference if unreasonable under the prevailing circumstances.

8. A person shall not operate a vessel in violation of restrictions as given by state-approved buoys or signs marking an area.

9. A person shall not operate on the waters of this state under the jurisdiction of the commission a vessel equipped with an engine of greater horsepower rating than is designated for the vessel by the federally required capacity plate or by the manufacturer's plate on those vessels not covered by federal regulations.

10. A person shall not leave an unattended vessel tied or moored to a dock which is placed immediately adjacent to a public boat launching ramp or to a dock which is posted for loading and unloading.

11. A person shall not operate a vessel within fifty feet of a diver's flag placed in accordance with the rules of the commission adopted under chapter 17A.

87 Acts, ch 215, §38 HF 594
Subsection 2 amended

106.31 Artificial lakes.

1. Except as provided in special rules adopted under this chapter, a motorboat shall not be permitted on any artificial lake under the jurisdiction of the commission except the following:

a. A motorboat equipped with one outboard battery operated electric trolling motor of not more than one and one-half horsepower.

b. A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated at a no-wake speed on all artificial lakes of more than one hundred acres in size under the custody of the department. However, on Big Creek lake and lake Macbride, a motorboat with a power unit exceeding ten horsepower may be operated only when permitted by rule and the rule shall not authorize such use during the period beginning on the Friday before Memorial Day and ending on Labor Day inclusively. This paragraph does not limit motorboat horsepower on natural lakes under the custody of the department or limit the department's authority to establish special speed zoning regulations.

2. All privately owned vessels on artificial lakes under the jurisdiction of the commission shall be kept at locations designated by the commission.

3. All privately owned vessels, used on or kept at the artificial lakes under the jurisdiction of the commission, shall be seaworthy for the waters where they are kept and used. All such vessels shall be removed from state property whenever ordered by the commission, and, in any event, shall be removed from such property not later than December 15 of each year.

4. Upon construction of an artificial lake by a political subdivision of this state, the subdivision may, after publication in a newspaper of general circulation in the subdivision, make formal application to the commission for special rules relating to the operation of watercraft on the lake, and shall set forth therein the reasons which make such special rules necessary or appropriate. The commission may promulgate the special rules as provided in this chapter, concerning the operation of watercraft on a lake constructed and maintained by a subdivision of this state. Such special rules may include the following:

a. Zoning by area and time to regulate navigation and other types of activity.

b. Regulating the horsepower, size and type of watercraft.

5. As provided in section 111A.5, county conservation boards may make regulations concerning horsepower limits and no-wake speeds on artificial lakes under their jurisdiction, except for state-owned artificial lakes managed by a county conservation board under a management agreement.

87 Acts, ch 124, §1, 2 HF 142
Subsection 1, paragraph b amended
NEW subsection 5

106.72 through 106.76 Reserved.

VESSEL CERTIFICATES OF TITLE

Sections 106.77 through 106.85 take effect January 1, 1988; 87 Acts, ch 134, §13 HF 595

106.77 Owner's certificate of title—in general.

1. Except as provided in subsection 3, an owner of a vessel seventeen feet or longer in length principally used on the waters of the state and to be numbered pursuant to section 106.4 shall apply to the county recorder of the county in which the owner resides for a certificate of title for the vessel. The requirement of a certificate of title does not apply to canoes or inflatable vessels regardless of length.

2. Each certificate of title shall contain the information and shall be issued in a form the department prescribes.

3. A person who, on January 1, 1988, is the owner of a vessel seventeen feet or longer in length with a valid certificate of number issued by the state is not required to file an application for a certificate of title for the vessel unless the person transfers an interest in the vessel.

4. Every owner of a vessel subject to titling under this chapter shall apply to the county recorder for issuance of a certificate of title for the vessel within thirty days after acquisition. The application shall be on forms the department prescribes, and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the vessel or the fair market value if no sale immediately preceded the transfer, and any additional information the department requires. If the application is made for a vessel last previously registered or titled in another state or foreign country, it shall contain this information and any other information the department requires.

5. If a dealer buys or acquires a used vessel for resale, the dealer shall report the acquisition to the county recorder on the forms the department provides, or the dealer may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used unnumbered vessel, the dealer shall apply for a certificate of title in the dealer's name within fifteen days. If a dealer buys or acquires a new vessel for resale, the dealer may apply for a certificate of title in the dealer's name.

6. Every dealer transferring a vessel requiring titling under this chapter shall assign the title to the new owner, or in the case of a new vessel assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title it issues.

8. A person shall not sell, assign, or transfer a vessel titled by the state without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a vessel required to be titled by the state without obtaining a certificate of title for it in that person's name.

9. A person who owns a vessel which is not required to have a certificate of title may apply for and receive a certificate of title for the vessel and the vessel shall subsequently be subject to the requirements of this division as though the vessel was required to be titled.

87 Acts, ch 134, §4 HF 595
NEW section

106.78 Fees—duplicates.

1. The county recorder shall charge a five dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face, and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

5. The funds collected under this section shall be placed in the general fund of the county and used for the expenses of the county conservation board if one exists in that county.

87 Acts, ch 134, §5 HF 595
NEW section

106.79 Obtaining manufacturer's or importer's certificate of origin.

A manufacturer or dealer shall not transfer ownership of a new vessel without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a vessel by the department upon good cause shown by the owner.

87 Acts, ch 134, §6 HF 595
NEW section

106.80 Hull identification number of vessel.

1. Every vessel whose construction began after October 31, 1972, shall have a hull identification number assigned and affixed as required by the federal Boat Safety Act of 1971. The department shall determine the procedures for application and for issuance of the hull identification number for homebuilt boats.

2. A person shall not destroy, remove, alter, cover, or deface the manufacturer's hull identification number, the plate bearing it, or any hull identification number the department assigns to a vessel without the department's permission.

3. A person other than a manufacturer who constructs a vessel or uses an unconventional device as a vessel for navigation shall submit an affidavit which describes the vessel or device to the department. In cooperation with the county recorder, the department shall assign a hull identification number to the vessel or device. The applicant shall cause the number to be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outermost starboard side at the end of the hull that bears the rudder or other steering mechanism, above the waterline of the vessel or device in such a way that alteration, removal, or replacement would be obvious and evident.

87 Acts, ch 134, §7 HF 595
NEW section

106.81 Dealer's record of vessels bought, sold, or transferred.

Every dealer shall maintain for three years a record of any vessel bought, sold, exchanged, or received for sale or exchange. This record shall be open to inspection by department representatives during reasonable business hours.

87 Acts, ch 134, §8 HF 595
NEW section

106.82 Transfer or repossession of vessel by operation of law.

1. If ownership of a vessel is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, or execution sale, the transferee, within thirty days after acquiring the right to possession of the vessel by operation of law, shall mail or deliver to the county recorder satisfactory proof of ownership as the county recorder requires, together with an application for a new certificate of title, and the required fee. A title tax is not required on these transactions.

2. If a lienholder repossesses a vessel by operation of law and holds it for resale, the lienholder shall secure a new certificate of title and shall pay the required fee.

87 Acts, ch 134, §9 HF 595
NEW section

106.83 Security interest in vessels—exemptions.

This division does not apply to or affect any of the following:

1. A lien given by statute or rule of law to a supplier of services or materials for a vessel.
2. A lien given by statute to the United States, this state, or any political subdivision of this state.
3. A security interest in a vessel created by a manufacturer or dealer who holds the vessel for sale, but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest.
4. A lien arising out of an attachment of a vessel.
5. A security interest claimed on proceeds if the original security interest did not have to be noted on the certificate of title in order to be perfected.
6. A vessel for which a certificate of title is not required under this chapter.
7. A security interest perfected under chapter 554 before January 1, 1988.

87 Acts, ch 134, §10 HF 595
NEW section

106.84 Perfection and titles.

1. In addition to the requirements of chapter 554, a security interest created in this state in a vessel required to have a certificate of title is not perfected unless and until the security interest is noted on the certificate of title.
2. The certificate of title shall be filed with the county recorder when the financing statement for that security interest or assigning the security interest is filed and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.
3. The secured party shall file the certificate of title with the county recorder when a termination or release statement is filed and a new or endorsed certificate shall be issued to the owner.

87 Acts, ch 134, §11 HF 595
NEW section

106.85 Forms—investigations.

1. The department shall prescribe and provide suitable forms for applications, certificates of title, notices of security interests, and all other notices and forms, other than those provided under chapter 554, necessary to carry out this division.
2. The department may make necessary investigations to procure information required to carry out this division.

87 Acts, ch 134, §12 HF 595
NEW section

CHAPTER 108

SPECIAL PROVISIONS—DEPARTMENT OF NATURAL RESOURCES

108.10 Artificial lakes—soil conservation.

In the construction of artificial lakes on intermittent streams, for which funds are appropriated by the general assembly, the commission shall not proceed with actual construction work unless and until soil conservation practices are in effect on at least seventy-five percent of the land comprising the watershed of the proposed impoundment, or a willingness to carry on such practices has been shown by the owners or operators of seventy-five percent of the land by signing of a soil conservation farm plan and co-operative agreements with the local soil and water conservation district governing body.

87 Acts, ch 23, §3 SF 382
Section amended

108.11 Agricultural drainage wells—wetlands—conservation easements.

The department shall develop and implement a program for the acquisition of wetlands and conservation easements on and around wetlands that result from

the closure or change in use of agricultural drainage wells upon implementation of the programs specified in section 159.29 to eliminate groundwater contamination caused by the use of agricultural drainage wells. The program shall be coordinated with the department of agriculture and land stewardship. The department may use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund in addition to other moneys available for wetland acquisition, protection, development, and management.

87 Acts, ch 225, §301 HF 631
NEW section

CHAPTER 109

WILDLIFE CONSERVATION

109.10A Farmer advisory committee.

The director shall establish a farmer advisory committee for the purpose of providing information to the department regarding crop and tree damage caused by deer, wild turkey, and other predators. The committee shall serve without compensation or reimbursement for expenses.

87 Acts, ch 233, §224 SF 511
NEW section

109.55 Limitations on purchase, sale, and barter.

Except as otherwise provided, it shall be unlawful for any person to buy or sell, dead or alive, any bird or animal or any part thereof which is protected by this chapter but nothing in this section shall apply to fur-bearing animals, rabbits, and the skins and plumage of legally taken game. Deer hides shall be plainly labeled with the owner's name and address and license number prior to the sale. This name and address and license number must remain attached to the hide while such hide is within the boundaries of this state. No person shall purchase, sell, barter or offer to purchase, sell or barter for millinery or ornamental use the feathers of migratory game birds; and no person shall purchase, sell, barter, or offer to purchase, sell or barter mounted specimens of migratory game birds.

Section 109.50 and this section do not apply to a game species, fur-bearing animal species, or variety of fish protected under this chapter which is sold by a nonprofit corporation as a part of a meal. The number of game of a game species or fur-bearing animal species, or a variety of fish protected by this chapter which are donated by a person to a nonprofit corporation plus any additional game of the same species or same variety of fish in the person's possession must not exceed the person's legal possession limit.

87 Acts, ch 176, §1 HF 464
NEW unnumbered paragraph 2

CHAPTER 109B

COMMERCIAL FISHING

109B.1 Authority of the commission.

The natural resource commission shall observe, administer, and enforce this chapter. The natural resource commission may adopt and enforce rules under chapter 17A as necessary to carry out this chapter.

The natural resource commission may:

1. Remove or cause to be removed from the waters of the state any aquatic species that in the judgment of the commission is an underused renewable

resource or has a detrimental effect on other aquatic populations. All proceeds from a sale of these aquatic organisms shall be credited to the state fish and game protection fund.

2. Issue to any person a permit or license authorizing that person to take, possess, and sell underused, undesirable, or injurious aquatic organisms from the waters of the state. The person receiving a permit or license shall comply with the applicable provisions of this chapter.

3. Authorize the director to enter into written contracts for the removal of underused, undesirable, or injurious organisms from the waters of the state. The contracts shall specify all terms and conditions desired. Sections 109B.4, 109B.6, and 109B.14 do not apply to these contracts.

4. Prohibit, restrict, or regulate commercial fishing, commercial turtle fishing, and commercial mussel fishing in any waters of the state.

5. Revoke the license of a licensee and the licensee's designated operators for up to one year if the licensee or any designated operator has been convicted of a violation of chapter 109, 109B, or 110.

6. Regulate the numbers of commercial fishers, commercial turtle fishers, and commercial mussel fishers and the amount, type, seasonal use, mesh size, construction and design, manner of use, and other criteria relating to the use of commercial gear for any body of water or part thereof.

7. Establish catch quotas, seasons, size limits, and other regulations for any species of commercial fish, turtles, or mussels for any body of water or part thereof.

8. Designate by listing species as commercial fish, turtles, or mussels.

9. Designate any body of water or its part as protected habitat and restrict, prohibit, or otherwise regulate the taking of commercial fish, turtles, and mussels in protected habitat areas.

Employees of the commission may lift and inspect any commercial gear at any time when being used and may inspect commercial catches, commercial markets, and landings, and examine catch records of commercial fishers, commercial turtle fishers, and commercial mussel fishers upon demand.

Officers of the commission may seize and retain as evidence any illegal fish, turtles, or mussels, or any illegal commercial gear, or any other personal property used in violation of any provision of the Code, and may confiscate any untagged or illegal commercial gear as contraband.

87 Acts, ch 115, §19 SF 374
Subsection 3 amended

CHAPTER 111

PUBLIC LANDS AND WATERS

111.85 User permits for certain state lands.

1. A person shall not park or permit to be parked a motor vehicle required to be registered under chapter 321 on land under the jurisdiction of the department where a user permit is required by subsection 3, unless the vehicle has a user permit attached in accordance with this section.

2. This section does not apply to the following vehicles:

a. Official government vehicles, or vehicles operated by state, county, city, and federal employees and agents while in the performance of official government business.

b. Vehicles operated by family members and guests of a department employee residing at an area subject to the user permit requirement. The department shall provide for temporary devices to identify the vehicles of such guests.

c. A vehicle moving on highways within or that cross state land to which this section applies.

d. A vehicle transporting employees to or furnishing services or supplies to the department or designated concessionaire.

3. The requirement of a user permit applies to developed campgrounds at the Shimek, Yellow River, and Stephens state forests, and all areas managed by the parks, recreation, and preserves division of the department except those excluded by rule. However, the requirement of a user permit shall not apply on any land acquired by gift if a condition of the gift was the free, public use of the land.

4. The user permit issued by the department is valid for either the calendar year in which issued or for twenty-four hours from the time of purchase. The fee is five dollars fifty cents for the calendar year permit and two dollars for the daily permit. If more than one motor vehicle is registered to members of the same household which resides in Iowa, a member of that household may purchase calendar year permits for the second motor vehicle for a fee of two dollars by showing to the county recorder the registration card of the second and proof of a calendar year permit for the first motor vehicle.

5. User permits shall be sold by the department and county recorders and may be sold by depositaries designated by the recorders or the director under section 110.11. A writing fee shall not be charged for dispensing the user permits. The department shall issue replacement permits, without fee, to persons whose original permit has been damaged, partially destroyed, or otherwise rendered unusable. A person shall apply to the department or its authorized representative for a replacement permit by presenting a verifiable remnant of the damaged, partially destroyed, or unusable permit.

6. A user permit is not transferable between vehicles and shall be displayed as the department prescribes by rule. The permit shall contain space upon which the motor vehicle registration plate numbers and letters shall be entered.

7. a. An officer of the department who observes a motor vehicle parked in violation of this section shall take the vehicle's registration number and may take other information displayed on the vehicle which may identify its user and deliver to the driver or conspicuously affix to the vehicle a notice of violation in writing on a form provided by the department. A person who receives the notice or knows that a notice has been affixed to the motor vehicle owned or controlled by the person may pay a civil penalty of twenty dollars to the department within twenty days. If the civil penalty is not timely paid, the department may cause a complaint to be filed against the owner or operator of the motor vehicle before a magistrate for the violation of this section in the manner provided in section 804.1. Timely payment of the civil penalty shall be a bar to any prosecution for that violation of this section. All civil penalties collected under this subsection shall be deposited in the general fund of the state.

b. If a citation is issued for a violation of this section and a plea of guilty is entered on or before the time and date set for appearance, the fine shall be fifteen dollars and court costs and the criminal penalty surcharge of section 911.2 shall not be imposed.

c. The department shall provide to its officers sets of triplicate notices each identified by separate serial numbers on each copy of notice. One copy shall be used as a notice of violation and delivered to the person charged or affixed to the vehicle illegally parked, one copy shall be sworn to by the officer as a complaint and may be filed with the clerk of the district court of the county if the civil penalty is not timely paid to the department and one copy shall be retained by the department for record purposes.

8. The county recorder shall remit to the commission all fees from the sale of user permits within ten days from the end of the month. The commission shall remit the fees from sales of user permits to the treasurer of state who shall place the money in a state park, forest, and recreation area facilities improvement trust fund. Notwithstanding section 453.7, subsection 2, interest or earnings on investments or time deposits of the funds in the state park, forest and recreation

area facilities improvement trust fund shall be credited to that fund. The money in that fund is appropriated to the commission solely for renovation, replacement, and improvement of facilities otherwise acquired in state parks, forests, and recreation areas. Notwithstanding chapters 96 and 97B, persons employed by the commission with the money from the trust fund are not eligible for membership in the Iowa public employees' retirement system or eligible to receive unemployment compensation benefits by virtue of this employment.

9. A person who receives a notice of violation under this section may, before a complaint is filed and in lieu of paying the civil penalty, produce proof that the person has acquired a current calendar year permit. The proof shall be submitted to the department in the same manner as the civil penalty.

87 Acts, ch 217, §1, 2 HF 316
Amendments effective January 1, 1988
Subsections 1-4, 5-7, and 9 amended
Former subsection 5 stricken and subsections 6-10 renumbered as 5-9

CHAPTER 111A

COUNTY CONSERVATION BOARD

111A.5 Regulations—penalty—officers.

The county conservation board may make, alter, amend or repeal regulations for the protection, regulation and control of all museums, parks, preserves, parkways, playgrounds, recreation centers, and other property under its control. The regulations shall not be contrary to, or inconsistent with, the laws of this state. The regulations shall not take effect until ten days after their adoption by the board and after their publication as provided in section 331.305 and after a copy of the regulations has been posted near each gate or principal entrance to the public ground to which they apply. After the publication and posting, a person violating a provision of the regulations which are then in effect is guilty of a simple misdemeanor. The board may designate the director and those employees as the director may designate as police officers who shall have all the powers conferred by law on police officers, peace officers, or sheriffs in the enforcement of the laws of this state and the apprehension of violators.

87 Acts, ch 43, §3 SF 265
See §106.31
Section amended

CHAPTER 111E

OPEN SPACE LANDS

111E.1 Statement of purpose— intent.

The general assembly finds that:

1. Iowa's most significant open space lands are essential to the well-being and quality of life for Iowans and to the economic viability of the state's recreation and tourism industry.

2. Many areas of high national significance in the state have not received adequate public protection to keep them free of visual blight, resource degradation, and negative impacts from inappropriate land use and surrounding development. Some of these areas include national park service and United States fish and wildlife service properties, national landmarks and trails, the Des Moines river greenbelt, the great river road, areas where interstate highways enter the state, cross major rivers, and pass by other areas of national significance, major state park and recreation areas, unique and protected water areas, and significant natural, geological, scenic, historic, and cultural properties of the state.

3. While state and federal funds are generally available for the acquisition and protection of fish and wildlife areas and habitats as well as boating access to public waters, funding programs for public open space acquisition and protection have not been adequate to meet needs.

4. Relative to other midwestern states, Iowa ranks last in the proportion of land acquired and protected for public open space.

5. A program shall be established to:

a. Educate the citizens of the state about the needs and urgency of protecting the state's open spaces.

b. Plan for the protection of the state's significant open space areas.

c. Acquire and protect those properties on a priority basis through a variety of appropriate means.

In addition to other goals for the program, it is intended that a minimum of ten percent of the state's land area be included under some form of public open space protection by the year 2000.

87 Acts, ch 174, §1 HF 620
NEW section

111E.2 Statewide open space acquisition and protection program—objectives and agency duties.

1. The department of natural resources has the following duties in undertaking programs to meet the objectives stated in section 111E.1.

a. Prepare and conduct new education and awareness programs designed to create greater public understanding of the needs, issues, and opportunities for protecting the state's significant open spaces. The department shall incorporate the recommendations of other state agencies and private sector organizations which have interests in open space protection. The department may enter into contracts with other agencies and the private sector for preparing and conducting these programs.

b. Prepare a statewide, long-range plan for the acquisition and protection of significant open space lands throughout the state as identified in section 111E.1. The department of transportation, department of economic development, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies with lands in the state shall be directly involved in preparing the plan. The plan shall include, but is not limited to, the following elements:

(1) Specific acquisition and protection needs and priorities for open space areas based on the following sequence of priorities:

(a) National.

(b) Regional.

(c) Statewide.

(d) Local.

(2) Identification of open space acquisition and protection techniques available or needed to carry out the plan.

(3) Additional education and awareness programs which are needed to encourage the acquisition and protection of areas identified in the plan.

(4) Management needs including maintenance, rehabilitation, and improvements.

(5) Funding levels needed to accomplish the statewide open space programs.

(6) Recommendations as to how federal programs can be modified or developed to assist the state's open space programs.

c. Acquire and protect open space properties as identified by priority in the plan as funding is made available for this purpose. In acquiring and protecting open space, the department shall:

(1) Accept applications for funding assistance from federal agencies, other state agencies, regional organizations, county conservation boards, city park and recreation agencies, and private organizations with an interest in open spaces.

(2) Obtain the maximum efficiency of funds appropriated for this program through the use of acquisition and protection techniques that provide the degree of protection required at the lowest cost.

(3) Encourage the provision of supporting or matching funds; however, the absence of these funds shall not prevent the approval of those projects of clear national importance.

2. The department may enter into contracts with private consultants for preparing all or part of the plan required under subsection 1, paragraph "b". The plan shall be submitted to the general assembly by July 1, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state and federal agencies and private organizations with interests in open space protection. The comments shall be submitted to the general assembly.

3. The department may initiate pilot acquisition and protection projects prior to completion of the open space plan if the pilot projects have high national significance as identified in section 1, subsection 2.

87 Acts, ch 174, §2 HF 620
NEW section

111E.3 Funding sources.

1. To achieve the purposes of this chapter, the department, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:

- a. Appropriations by the general assembly.
- b. Private grants and gifts.
- c. Federal grants and loans intended for these purposes.

2. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the purposes of carrying out this natural open space program or specific elements of the program.

87 Acts, ch 174, §3 HF 620
NEW section

111E.4 Payment in lieu of property taxes.

As a part of the budget proposal submitted to the general assembly under section 455A.4, subsection 1, paragraph "c", the director of the department of natural resources shall submit a budget request to pay the property taxes for the next fiscal year on open space property acquired by the department which would otherwise be subject to the levy of property taxes. The assessed value of open space property acquired by the department shall be that determined under section 427.1, subsection 31, and the director may protest the assessed value in the manner provided by law for any property owner to protest an assessment. For the purposes of chapter 442, the assessed value of the open space property acquired by the department shall be included in the valuation base of the school district and the payments made pursuant to this section shall be considered as property tax revenues and not as miscellaneous income. The county treasurer shall certify taxes due to the department. The taxes shall be paid annually from the departmental fund or account from which the open space property acquisition was funded. If the departmental fund or account has no moneys or no longer exists, the taxes shall be paid from funds as otherwise provided by the general assembly. If the total amount of taxes due certified to the department exceeds the amount appropriated, the taxes due shall be reduced proportionately so that the total

amount equals the amount appropriated. This section applies to open space property acquired by the department on or after January 1, 1987.

87 Acts, ch 174, §4 HF 620
NEW section

CHAPTER 111F

RECREATION TRAILS

111F.1 Statement of purpose— intent.

The general assembly finds that recreation trails provide a significant benefit for the health and well-being of Iowans and state visitors. Iowa has a national reputation as a place for hiking, walking, and bicycling. The use of recreation trails has a significant influence on Iowa's economy. Iowa's scenic landscapes, many small communities, and existing natural and transportation corridors are ideally suited for new recreation trails to support recreation and tourism activities such as walking, biking, driving for pleasure, horseback riding, boating and canoeing, skiing, snowmobiling, and others.

The general assembly finds that a program shall be established to acquire, develop, promote, and manage existing and new recreation trails. The objective of a statewide trails program shall be for the state to acquire and develop two thousand miles of new recreation trails and completion of existing trail projects before the year 2000.

87 Acts, ch 173, §1 HF 575
NEW section

111F.2 Statewide trails development program.

The state department of transportation shall undertake the following programs to meet the objective stated in section 111F.1:

1. Prepare a long-range plan for the acquisition, development, promotion, and management of recreation trails throughout the state. The plan shall identify needs and opportunities for recreation trails of different kinds having national, statewide, regional, and multicounty importance. Recommendations in the plan shall include but not be limited to:

- a. Specific acquisition needs and opportunities for different types of trails.
- b. Development needs including trail surfacing, restrooms, shelters, parking, and other needed facilities.
- c. Promotional programs which will encourage Iowans and state visitors to increase use of trails.
- d. Management activities including maintenance, enforcement of rules, and replacement needs.
- e. Funding levels needed to accomplish the statewide trails objectives.
- f. Ways in which trails can be more fully incorporated with parks, cultural sites, and natural resource sites.

2. The plan shall recommend standards for establishing functional classifications for all types of recreation trails as well as a system for determining jurisdictional control over trails. Levels of jurisdiction may be vested in the state, counties, cities, and private organizations.

3. The state department of transportation may enter into contracts for the preparation of the trails plan. The department shall involve the department of natural resources, the Iowa department of economic development, and the department of cultural affairs in the preparation of the plan. The recommendations and comments of organizations representing different types of trail users and others with interests in this program shall also be incorporated in the preparation of the trails plan and shall be submitted with the plan to the general assembly. The plan shall be submitted to the general assembly no later than

January 15, 1988. Existing trail projects involving acquisition or development may receive funding prior to the completion of the trails plan.

The department shall give priority to funding the acquisition and development of trail portions which will complete segments of existing trails. The department shall give preference to the acquisition of trail routes which use existing or abandoned railroad right-of-ways, river valleys, and natural greenbelts. Multiple recreational use of routes for trails, other forms of transportation, utilities, and other uses compatible with trails shall be given priority.

The department may acquire property by negotiated purchase and hold title to property for development of trails. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the planning, acquisition, development, promotion, management, operations, and maintenance of recreation trails.

The department may adopt rules under chapter 17A to carry out a trails program.

87 Acts, ch 173, §2 HF 575
NEW section

111F.3 Involvement of other agencies.

The department of natural resources, the Iowa department of economic development, and the department of cultural affairs shall assist the state department of transportation in developing the statewide plan for recreation trails, in acquiring property, and in the development, promotion, and management of recreation trails.

87 Acts, ch 173, §3 HF 575
NEW section

111F.4 Funding.

To achieve the purposes of this chapter, the state department of transportation, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:

1. Funds appropriated by the general assembly.
2. Private grants and gifts.
3. Federal grants and loans intended for these purposes.

87 Acts, ch 173, §4 HF 575
NEW section

CHAPTER 113

FENCES

113.18 "Lawful fence" defined. A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.
2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.
3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.
4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between

forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. Any other kind of fence which the fence viewers consider to be equivalent to a lawful fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a lawful fence.

87 Acts, ch 17, §5 SF 271
 Subsection 5 affirmed and reenacted effective April 17, 1987;
 legislative findings; 87 Acts, ch 17, §1, 12 SF 271

113.20 "Tight fence" defined.

All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.

2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of fence which the fence viewers consider to be equivalent to a tight partition fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a tight partition fence.

87 Acts, ch 17, §6 SF 271
 Subsection 3 affirmed and reenacted effective April 17, 1987;
 legislative findings; 87 Acts, ch 17, §1, 12 SF 271

CHAPTER 114

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

114.14 General requirements for registration—temporary permit to practice engineering.

Each applicant for registration as a professional engineer or land surveyor shall have all of the following requirements, respectively, to wit:

1. As a professional engineer:
 a. (1) Graduation from a course in engineering of four years or more in a school or college which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental engineering subjects.

(2) However, prior to July 1, 1988, in lieu of compliance with subparagraph (1), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

(3) Between July 1, 1988 and June 30, 1991, in lieu of compliance with subparagraph (1), the board shall require satisfactory completion of a minimum of two years of postsecondary study in mathematics, physical sciences, engineering technology, or engineering at an institution approved by the board, and may accept six years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental engineering subjects.

b. Successfully passing a written, oral, or written and oral examination in fundamental engineering subjects which is designed to show the knowledge of general engineering principles. A person passing the examination in fundamental engineering subjects will be entitled to a certificate as an engineer-in-training.

c. In addition to any other requirement, a specific record of four years or more of practical experience in engineering work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of professional engineering. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in engineering work.

2. As a land surveyor:

a. (1) Graduation from a course of two years or more in mathematics, physical sciences, mapping and surveying, or engineering in a school or college and six years of practical experience, all of which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental land surveying subjects.

(2) However, prior to July 1, 1988, in lieu of compliance with subparagraph (1), the board may accept eight years' practical experience which, in the opinion of the board, is of satisfactory character to properly prepare the applicant for the examination in fundamental land surveying subjects.

b. Successfully passing a written, oral, or written and oral examination in fundamental land surveying subjects which is designed to show the knowledge of general land surveying principles.

c. In addition to any other requirement, a specific record of four years or more of practical experience in land surveying work which is of a character satisfactory to the board.

d. Successfully passing a written, oral, or written and oral examination designed to determine the proficiency and qualifications to engage in the practice of land surveying. No applicant shall be entitled to take this examination until the applicant shows the necessary practical experience in land surveying work.

The board may establish by rule a temporary permit and a fee to permit an engineer to practice for a period of time without applying for registration.

87 Acts, ch 165, §1, 2 SF 509
Subsection 1, paragraph a amended
Subsection 2, paragraph a amended

CHAPTER 118

REGISTERED ARCHITECTS

118.1 Practice regulated—creation of architectural examining board.

The practice of architecture affects the public health, safety, and welfare and is subject to regulation and control in the public interest. Only persons qualified by the laws of the state are authorized to engage in the practice of architecture in the state.

The architectural examining board is created within the professional licensing and regulation division of the department of commerce. The board consists of five members who possess a certificate of registration issued under section 118.9 and who have been in active practice of architecture for not less than five years, the last two of which shall have been in Iowa, and two members who do not possess a certificate of registration issued under section 118.9 and who shall represent the general public. Members shall be appointed by the governor subject to confirmation by the senate.

Professional associations or societies composed of registered architects may recommend the names of potential board members to the governor but the governor is not bound by the recommendations. A board member is not required to be a member of any professional association or society composed of registered architects. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term

by appointment of the governor and shall require senate confirmation. Members shall serve no more than three terms or nine years, whichever is less.

87 Acts, ch 92, §1 HF 587
NEW unnumbered paragraph 1

118.2 Officers.

During the month of July of each year the board shall elect from its members a president, vice president, and a secretary. The duties of the officers shall be such as are usually performed by such officers. The division may employ an executive secretary whose salary shall be established pursuant to section 19A.9, subsection 2.

87 Acts, ch 92, §2 HF 587
Section amended

118.8 Qualification for registration.

Any person may apply for a certificate of registration or may apply to take an examination for certification under this chapter. The board shall not require that the application contain a photograph of the applicant.

The board shall adopt rules governing practical training and education and may adopt as its rules criteria published by a national certification body recognized by the board. The board may accept the accreditation decisions of a national accreditation body recognized by the board.

A person applying for registration by examination, upon complying with the other requirements, shall satisfactorily pass an examination in technical and professional subjects prescribed by the board. The board may adopt the uniform standardized examination and grading procedures of a national certification body recognized by the board. The examination may be conducted by representatives of the board. The identity of the person taking the examination shall be concealed until after the examination has been graded. The board shall adopt rules regarding reexamination. An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and the other information concerning the applicant's examination results which is available to the board.

In lieu of examination, the board may grant registration by reciprocity. A person applying to the board for registration by reciprocity shall furnish satisfactory evidence that the person meets both of the following requirements:

1. Holds a valid and current certificate of registration issued by another registration authority recognized by the board, where the qualifications for registration were substantially equivalent to those prescribed in this state on the date of original registration with the other registration authority.

2. Holds a record or certificate issued by a national certification council recognized by the board.

87 Acts, ch 92, §3 HF 587
Section amended

118.10 Renewals.

Certificates of registration expire in multiyear intervals as determined by the board. Registered architects shall renew their certificates of registration and pay a renewal fee in the manner prescribed by the board. The board shall prescribe the conditions and reasonable penalties for renewal after a certificate's expiration date.

87 Acts, ch 92, §4 HF 587
Section amended

118.11 Fees.

The board shall set the fees for examination, for a certificate of registration as an architect, for renewal of a certificate, for reinstatement of a certificate, and for other activities of the board pertaining to its duties. The fee for examination shall be based on the annual cost of administering the examinations. The fee for a certificate of registration and for renewal of a certificate shall be based upon the administrative costs of sustaining the board which shall include, but are not limited to, the costs for all of the following:

1. Per diem, expenses and travel for board members.
2. Office facilities, supplies and equipment.
3. Clerical assistance.

All fees shall be paid to the treasurer of state and deposited in the general fund of the state.

87 Acts, ch 92, §5 HF 587
Section amended

118.13 Revocation or suspension.

A license to practice architecture may be revoked or suspended when the licensee is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice the profession of architecture. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this Act.*
9. Willful or repeated violations of one or more rules of conduct adopted by the board.

The board may revoke any certificate after thirty days' notice with grant of hearing to the holder if satisfactory proof is presented to the board.

Proceedings for the revocation of a certificate shall be begun by filing written charges against the accused with the board. A time and place for the hearing of the charges shall be fixed by the board. Where personal service or services through counsel cannot be effected, services may be had by publication. At the hearing, the accused shall have the right to be represented by counsel, to introduce evidence and to examine and cross-examine witnesses. The board shall have the power to subpoena witnesses, to administer oaths to such witnesses, and to employ counsel. The board shall make a written report of its findings, which report shall be filed with the secretary of state, and which shall be conclusive.

87 Acts, ch 92, §6 HF 587
*See 67 GA, ch 95, §13
NEW subsection 9

118.15 Unlawful practice—violations—penalty— consent agreement.

It is unlawful for a person to engage in or to offer to engage in the practice of architecture in this state or use in connection with the person's name the title "architect", "registered architect", or "architectural designer", or to imply that the person provides or offers to provide professional architectural services, or to otherwise assume, use or advertise any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the

person is an architect or is engaged in the practice of architecture unless the person is qualified by registration as provided in this chapter.

A person who violates this section is guilty of a serious misdemeanor.

The board at its discretion and in lieu of prosecuting a first offense described in this section may enter into a consent agreement with a violator, or with a person guilty of aiding or abetting a violator, which acknowledges the violation and the violator's agreement to refrain from any further violations.

87 Acts, ch 92, §7 HF 587
Section amended

118.16 Definitions.

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

1. "*Architect*" means a person qualified to engage in the practice of architecture who holds a current valid registration under the laws of this state.
2. "*Board*" means the architectural examining board established in section 118.1.
3. "*Construction*" means physical alteration of a building or improvement of real estate, and includes new construction, enlargements, or additions to existing construction, and alterations, renovation, remodeling, restoration, preservation, or other material modification to and within existing construction.
4. "*Construction documents*" means the drawings, specifications, technical submissions, and other documents upon which construction is based.
5. "*Direct supervision and responsible charge*" means an architect's personal supervisory control of work as to which the architect has detailed professional knowledge. In respect to preparing technical submissions, "*direct supervision and responsible charge*" means that the architect has the exercising, directing, guiding, and restraining power over the design of the building or structure and the preparation of the documents, and exercises professional judgment in all architectural matters embodied in the documents. Merely reviewing the work prepared by another person does not constitute "*direct supervision and responsible charge*" unless the reviewer actually exercises supervision and control and is in responsible charge of the work.
6. "*Good moral character*" means a reputation for trustworthiness, honesty, and adherence to professional standards of conduct.
7. "*Observation of construction site progress*" means intermittent visitation to the construction site by an architect or the architect's employee for the purpose of general familiarity with the progress and quality of the construction and general conformance of the construction to the construction documents and general compliance with the applicable building codes. For the purpose of this chapter, such observation does not imply exhaustive or continuous on-site inspections to check the quality or quantity of construction work.
8. "*Practice of architecture*" means performing, or offering to perform, professional architectural services in connection with the design, preparation of construction documents, or construction of one or more buildings, structures, or related projects, and the space within and surrounding the buildings or structures, or the addition to or alteration of one or more buildings or structures, which buildings or structures have as their principal purpose human occupancy or habitation, if the safeguarding of life, health, or property is concerned or involved, unless the buildings or structures are excepted from the requirements of this chapter by section 118.18.
9. "*Professional architectural services*" means consultation, investigation, evaluation, programming, planning, preliminary design and feasibility studies, designs, drawings, specifications and other technical submissions, administration of construction contracts, observation of construction site progress, or other services and instruments of service related to architecture. A person is performing or offering to perform professional architectural services within the meaning of this chapter, if the person, by verbal claim, sign, advertisement, letterhead, card,

or in any other way represents the person to be an architect or through the use of a title implies that the person is an architect.

10. "*Professional consultant*" means a person who is required by the laws of this state to hold a current and valid certificate of registration in the field of the person's professional practice, and who is employed by the architect to perform, or who offers to perform professional services as a consultant to the architect, in connection with the design, preparation of construction documents or other technical submissions, or construction of one or more buildings or structures, and the space within and surrounding the buildings or structures.

11. "*Programming*" means the identification, verification, and analysis of the architectural requirements precedent to the planning and design of a building or structure.

12. "*Registration*" means the certificate of registration issued to an architect by the board.

13. "*Technical submissions*" means the designs, drawings, sketches, specifications, details, studies, and other technical reports, including construction documents, prepared in the course of the practice of architecture.

87 Acts, ch 92, §8 HF 587
Section stricken and rewritten

118.19 Violations—punishment. Repealed by 87 Acts, ch 92, §9. HF 587 See §118.15.

118.21 Practice by business entities.

Corporations may be formed under the Iowa Business Corporation Act for the purpose of engaging in the practice of architecture. A corporation may be either a business corporation or a professional corporation. A corporation, partnership, sole proprietorship, or other business entity is not eligible for registration under this chapter. Only an individual natural person is eligible for registration. A domestic or foreign corporation, partnership, sole proprietorship, or other business entity may engage in the practice of architecture in this state, but only if all of the following requirements are met:

1. The entire practice of architecture by the corporation, partnership, sole proprietorship, or other business entity in this state and in connection with buildings, structures, and projects located in this state shall be performed by or under the direct supervision and responsible charge of one or more architects.

2. No less than two-thirds of the directors, if a corporation, or no less than two-thirds of the general partners, if a partnership, or the sole proprietor shall be qualified by registration to perform either professional architectural services or professional engineering services, by a registration authority recognized by the board, where the qualifications for registration are, in the opinion of the board, substantially equivalent to those prescribed by the laws of this state.

3. No less than one-third of the directors, if a corporation, or no less than one-third of the general partners, if a partnership, or the sole proprietor shall be qualified by registration to perform professional architectural services, by a registration authority recognized by the board, where the qualifications for registration are, in the opinion of the board, equivalent to those prescribed by this chapter.

4. A person engaging in the practice of architecture in the state of Iowa and in responsible charge on behalf of a business entity engaged in the practice of architecture, must be registered to practice architecture in this state, and shall be a director, if a corporation, a general partner, if a partnership, or a sole proprietor of the business entity.

5. Before engaging in the practice of architecture in this state, a corporation, partnership, or sole proprietorship shall acquire an "authorization to practice architecture as a business entity" from the board. The board shall adopt rules establishing the required information concerning officers, directors, beneficial

owners, limitations on the name of the business entity, and other aspects of its business organization, which must be submitted to the board upon forms prescribed by the board in order to qualify for authorization.

The practice of architecture by or through a corporation, partnership, sole proprietorship, or other business entity does not relieve a person of liability for professional errors or omissions which liability would exist if the person were practicing as an individual, including, but not limited to, liability arising out of negligent supervision of the work of subordinates.

87 Acts, ch 92, §10 HF 587
Section stricken and rewritten

118.25 Applicant—civil rights—moral character.

An applicant is not ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin, although the application form may require citizenship information. Character references may be required.

The board may consider the following aspects when investigating an applicant's good moral character:

1. An applicant's conviction for commission of a felony, but only if the felony relates directly to the practice of architecture or to the applicant's honesty.

2. An applicant's misstatement, omission, or misrepresentation of a material fact in connection with the applicant's application for registration in this state or another jurisdiction.

3. An applicant's violation of a rule of conduct of a jurisdiction in which the applicant has previously engaged in the practice of architecture, provided that the rule of conduct violated is substantially equivalent to a then existing or current rule of conduct required of architects in this state.

4. An applicant's practice of architecture without being registered in violation of registration laws of the jurisdiction in which the practice took place.

If the applicant's background includes any of the foregoing, the board may register the applicant on the basis of suitable evidence of reform.

87 Acts, ch 92, §11 HF 587
Section amended

118.28 Seal required.

An architect shall procure a seal with which to identify all technical submissions issued by the architect for use in this state. The seal shall be of a design, content, and size designated by the board.

Technical submissions prepared by an architect, or under an architect's direct supervision and responsible charge, shall be stamped with the impression of the architect's seal. The board shall designate by rule the location, frequency, and other requirements for use of the seal. An architect shall not impress the architect's seal on technical submissions if the architect was not the author of the technical submissions or if they were not prepared under the architect's direct supervision and responsible charge. An architect who merely reviews standardized construction documents for pre-engineered or prototype buildings, is not the author of the technical submissions and the technical submissions were not prepared under a reviewing architect's responsible charge.

An architect shall cause those portions of technical submissions prepared by a professional consultant to be stamped with the impression of the seal of the professional consultant, with a clear identification of the consultant's areas of responsibility, signature, and date of issuance.

A public official charged with the enforcement of the state building code, or a municipal or county building code, shall not accept or approve any technical submissions involving the practice of architecture unless the technical submissions have been stamped with the architect's seal as required by this section or unless the applicant has certified on the technical submission to the applicability of a specific exception under section 118.18 permitting the preparation of

technical submissions by a person not registered under this chapter. A building permit issued with respect to technical submissions which do not conform to the requirements of this section is invalid.

87 Acts, ch 92, §12 HF 587
NEW section

118.29 Rules.

The board may adopt rules consistent with this chapter for the administration and enforcement of this chapter and may prescribe forms to be issued. The rules may include, but are not limited to, standards and criteria for licensure, license renewal, professional conduct, misconduct, and discipline. Violation of a rule of conduct is grounds for disciplinary action or reprimand or probation at the discretion of the board. The board may enter into a consent order with an architect which acknowledges an architect's violation and agreement to refrain from any further violation. A willful or repeated violation of a rule of conduct is grounds for disciplinary action as provided in section 118.13.

87 Acts, ch 92, §13 HF 587
NEW section

CHAPTER 123

IOWA ALCOHOLIC BEVERAGE CONTROL ACT

123.20 Powers.

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

1. To purchase alcoholic liquors and wine for resale by the division in the manner set forth in this chapter.
2. To rent, lease, or equip any building or any land necessary to carry out the provisions of this chapter.
3. To lease all plants and lease or buy equipment necessary to carry out the provisions of this chapter.
4. To appoint clerks, agents, or other employees required for carrying out the provisions of this chapter; to dismiss employees for cause; to assign employees to bureaus as created by the administrator within the division; and to designate their title, duties, and powers. All employees of the division are subject to chapter 19A unless exempt under section 19A.3.
5. To grant and issue beer permits, special permits, liquor control licenses, and other licenses; and to suspend or revoke all such permits and licenses for cause under this chapter.
6. To license, inspect, and control the manufacture of beer, wine, and alcoholic liquors and regulate the entire beer, wine, and liquor industry in the state.
7. To accept intoxicating liquors ordered delivered to the alcoholic beverages division pursuant to chapter 809, and offer for sale and deliver the intoxicating liquors to class "E" liquor control licensees, unless the administrator determines that the intoxicating liquors may be adulterated or contaminated. If the administrator determines that the intoxicating liquors may be adulterated or contaminated, the administrator shall order their destruction.

87 Acts, ch 115, §20 SF 374
Subsection 7 amended

123.24 Alcoholic liquor sales by the division—dishonored checks—liquor prices.

1. The division shall sell alcoholic liquor at wholesale only. The division shall sell alcoholic liquor to class "E" liquor control licensees only. The division shall offer the same price on alcoholic liquor to all class "E" liquor control licensees

without regard for the quantity of purchase or the distance for delivery. However, the division may assess a split-case charge when liquor is sold in quantities which require a case to be split.

2. *a.* The division may accept from a class "E" liquor control licensee a cashier's check which shows the licensee is the remitter or a check issued by the licensee in payment of alcoholic liquor. If a check is subsequently dishonored, the division shall cause a notice of nonpayment and penalty to be served upon the class "E" liquor control licensee or upon any person in charge of the licensed premises. The notice shall state that if payment or satisfaction for the dishonored check is not made within ten days of the service of notice, the licensee's liquor control license shall be suspended under section 123.39. The notice of nonpayment and penalty shall be in a form prescribed by the administrator, and shall be served by a peace officer.

b. If upon notice and hearing under section 123.39 and pursuant to the provisions of chapter 17A concerning a contested case hearing, the administrator determines that the class "E" liquor control licensee failed to satisfy the obligation for which the check was issued within ten days after the notice of nonpayment and penalty was served on the licensee as provided in paragraph "a" of this subsection, the administrator shall suspend the licensee's class "E" liquor control license for not less than three days but not more than thirty days.

c. Paragraphs "a" and "b" do not apply if a class "E" liquor control licensee tenders the division three or more checks during a twelve-month period which are dishonored. Following notification to the division of dishonor of a check after the second check so dishonored from the same licensee, the administrator shall suspend a licensee's class "E" liquor control license for not less than three nor more than thirty days, after notice and an opportunity for hearing. Payment of a check whose dishonor subjects the licensee to suspension does not affect the liability of the licensee to suspension.

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

87 Acts, ch 22, §1, 2 SF 298
Subsections 1 and 3 amended

123.26 Restrictions on sales—seals—labeling.

Alcoholic liquor shall not be sold by a class "E" liquor control licensee except in a sealed container with identifying markers as prescribed by the administrator and affixed in the manner prescribed by the administrator, and no such container shall be opened upon the premises of a state warehouse. The division shall cooperate with the department of natural resources so that only one identifying marker or mark is needed to satisfy the requirements of this section and section 455C.5, subsection 1. Possession of alcoholic liquors which do not carry the prescribed identifying markers is a violation of this chapter except as provided in section 123.22.

87 Acts, ch 22, §3 SF 298
Section amended

123.28 Restrictions on transportation of open or unsealed receptacles.

It is lawful to transport, carry, or convey alcoholic liquors from the place of purchase by the division to a state warehouse or depot established by the division or from one such place to another and, when so permitted by this chapter, it is lawful for the division, a common carrier, or other person to transport, carry, or convey alcoholic liquor sold from a state warehouse, depot, or point of purchase by

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

A person driving a motor vehicle shall not knowingly possess in a motor vehicle upon a public street or highway an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage, wine, or beer with the intent to consume the alcoholic beverage, wine, or beer while the motor vehicle is upon a public street or highway. Evidence that an open or unsealed receptacle containing an alcoholic beverage, wine, or beer was found during an authorized search in the glove compartment, utility compartment, console, front passenger seat, or any unlocked portable device and within the immediate reach of the driver while the motor vehicle is upon a public street or highway is evidence from which the court or jury may infer that the driver intended to consume the alcoholic beverage, wine, or beer while upon the public street or highway if the inference is supported by corroborative evidence. However, an open or unsealed receptacle containing an alcoholic beverage, wine, or beer may be transported at any time in the trunk of the motor vehicle or in some other area of the interior of the motor vehicle not designed or intended to be occupied by the driver and not readily accessible to the driver while the motor vehicle is in motion. A person convicted of a violation of this paragraph is guilty of a simple misdemeanor.

87 Acts, ch 170, §1 HF 371

1987 amendment effective January 1, 1988; 87 Acts, ch 170, §1 HF 371

Unnumbered paragraph 1 amended

123.30 Liquor control licenses.

1. Upon posting bond in the required sum with surety and conditions prescribed by the administrator, which bond shall be conditioned upon the payment of all taxes payable to the state under the provisions of this chapter and compliance with all provisions of this chapter, a liquor control license may be issued to any person who, or whose officers, in the case of a club or corporation, or whose partners, in the case of a partnership, is of good moral character as defined by this chapter. The bond for a class "E" liquor control license shall be a sum of not less than five thousand nor more than fifteen thousand dollars as determined on a sliding scale established by the division; however, a bond shall not be required if all purchases of alcoholic liquor from the division by the licensee are made by cash payment or by means that ensures that the division will receive full payment in advance of delivery of the alcoholic liquor. The bond for all other liquor control licenses issued under this chapter shall be a sum of five thousand dollars.

As a further condition for issuance of a liquor control license, the applicant must give consent to members of the fire, police and health departments and the building inspector of cities; the county sheriff, deputy sheriff, and state agents, and any official county health officer to enter upon the premises without a warrant to inspect for violations of the provisions of this chapter or ordinances and regulations that cities and boards of supervisors may adopt.

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

2. No liquor control license shall be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations. Nor shall any licensee have or maintain any interior access to residential or sleeping quarters unless permission is granted by the administrator in the form of a living quarters permit.

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

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

b. *Class "B"*. A class "B" liquor control license may be issued to a hotel or motel and shall authorize the holder to purchase alcoholic liquors from class "E" liquor control licensees only, wine from class "A" wine permittees only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer, to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises. Each license shall be effective throughout the premises described in the application.

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

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

d. *Class "D"*. A class "D" liquor control license may be issued to a railway corporation, to an air common carrier, and to passenger-carrying boats or ships for hire with a capacity of twenty-five persons or more operating in inland or boundary waters, and shall authorize the holder to sell or furnish alcoholic beverages, wine, and beer to passengers for consumption only on trains, watercraft as described in this section, or aircraft, respectively. Each license is valid throughout the state. Only one license is required for all trains, watercraft, or aircraft operated in the state by the licensee.

e. *Class "E"*. A class "E" liquor control license may be issued and shall authorize the holder to purchase alcoholic liquor from the division only and to sell the alcoholic liquor to patrons for consumption off the licensed premise and to other liquor control licensees. A class "E" license shall not be issued to premises at which gasoline is sold. A holder of a class "E" liquor control license may hold

other retail liquor control licenses or retail wine or beer permits, but the premises licensed under a class "E" liquor control license shall be separate from other licensed premises. However, the holder of a class "E" liquor control license may also hold a class "B" wine or class "C" beer permit or both for the premises licensed under a class "E" liquor control license.

87 Acts, ch 22, §4-6 SF 298
 Amendments effective April 21, 1987
 Subsection 1, unnumbered paragraph 1 amended
 Subsection 1, NEW unnumbered paragraph 3
 Subsection 3, paragraph e amended

123.36 Liquor fees—Sunday sales.

The following fees shall be paid to the division annually for special liquor permits and liquor control licenses issued under sections 123.29 and 123.30 respectively:

1. Special liquor permits, the sum of five dollars.
2. Class "A" liquor control licenses, the sum of six hundred dollars, except that for class "A" licenses in cities of less than two thousand population, and for clubs of less than two hundred fifty members, the license fee shall be four hundred dollars; however, the fee shall be two hundred dollars for any club which is a post, branch, or chapter of a veterans organization chartered by the Congress of the United States, if the club does not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week, and if the application for a license states that the club does not and will not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week.
 3. Class "B" liquor control licenses, the sum as follows:
 - a. Hotels or motels located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.
 - b. Hotels and motels located within the corporate limits of cities of over three thousand and less than ten thousand population, one thousand fifty dollars.
 - c. Hotels and motels located within the corporate limits of cities of three thousand population and less, eight hundred dollars.
 - d. Hotels and motels located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail.
 4. Class "C" liquor control licenses, the sum as follows:
 - a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.
 - b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, nine hundred fifty dollars.
 - c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, six hundred dollars.
 - d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the license fee which is the larger shall prevail.
 5. Class "D" liquor control licenses, the following sums:
 - a. For watercraft, one hundred fifty dollars.
 - b. For trains, five hundred dollars.
 - c. For air common carriers, each company shall pay a base annual fee of five hundred dollars and, in addition, shall quarterly remit to the division an amount equal to seven dollars for each gallon of alcoholic liquor sold, given away, or dispensed in or over this state during the preceding calendar quarter. The class

"D" license fee and tax for air common carriers is in lieu of any other fee or tax collected from the carriers in this state for the possession and sale of alcoholic liquor, wine, and beer.

6. Any club, hotel, motel, or commercial establishment holding a liquor control license, subject to section 123.49, subsection 2, paragraph "b", may apply for and receive permission to sell and dispense alcoholic liquor and wine to patrons on Sunday for consumption on the premises only, and beer for consumption on or off the premises between the hours of ten a.m. and twelve midnight on Sunday. For the privilege of selling beer, wine, and alcoholic liquor on the premises on Sunday the liquor control license fee of the applicant shall be increased by twenty percent of the regular fee prescribed for the license pursuant to this section, and the privilege shall be noted on the liquor control license.

7. Special class "C" liquor control licenses, a sum as follows:

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

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

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

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the license fee which is the larger shall prevail.

8. The division shall credit all fees to the beer and liquor control fund. The division shall remit to the appropriate local authority, a sum equal to sixty-five percent of the fees collected for each class "A", class "B", or class "C" license except special class "C" licenses or class "E" licenses, covering premises located within the local authority's jurisdiction. The division shall remit to the appropriate local authority a sum equal to seventy-five percent of the fees collected for each special class "C" license covering premises located within the local authority's jurisdiction. Those fees collected for the privilege authorized under subsection 6 and those fees collected for each class "E" liquor control license shall be credited to the beer and liquor control fund.

9. Class "E" liquor control license, a sum of not less than seven hundred and fifty dollars, and not more than seven thousand five hundred dollars as determined on a sliding scale as established by the division taking into account the factors of square footage of the licensed premises, the location of the licensed premises, and the population of the area of the location of the licensed premises. Notwithstanding subsection 6, the holder of a class "E" liquor control license may sell alcoholic liquor for consumption off the licensed premises on Sunday subject to section 123.49, subsection 2, paragraph "b".

10. There is imposed a surcharge on the fee for each class "A", "B", or "C" liquor control license equal to thirty percent of the scheduled license fee. The surcharges collected under this subsection shall be deposited in the beer and liquor control fund, and notwithstanding subsection 8, no portion of the surcharges collected under this subsection shall be remitted to the local authority.

87 Acts, ch 22, § 7, 8 SF 298
Subsections 6 and 8 amended

123.51 Advertisements for alcoholic liquor, wine, or beer.

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

2. Violation of this section is a simple misdemeanor.

87 Acts, ch 22, §9 SF 298

Amendment effective April 21, 1987

Subsection 2 stricken and former subsection 3 renumbered 2

123.134 Beer fees—Sunday sales.

1. The annual permit fee for a class "A" permit shall be two hundred fifty dollars.

2. The annual permit fee for a class "B" permit shall be graduated according to population as follows:

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

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

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

d. For premises located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be operated under the permit, and in case there is doubt as to which of two or more differing corporate limits are the nearest, the permit fee which is the largest shall prevail.

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

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

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

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

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

4. The annual permit fee for a special class "B" permit, issued under section 123.133, shall be one hundred dollars, and three dollars for each duplicate permit, which fees shall be paid to the division. The division shall issue duplicates of such permits from time to time as applied for by each such company.

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

87 Acts, ch 22, §10 SF 298

Subsection 5 amended

123.143 Distribution of funds.

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

1. All retail beer permit fees collected by any local authority at the time application for the permit is made shall be retained by the local authority. A certified copy of the receipt for the permit fee shall be submitted to the division with the application and the local authority shall be notified at the time the permit is issued. Those amounts collected for the privilege authorized under section 123.134, subsection 5, shall be deposited in the beer and liquor control fund.

2. All permit fees and taxes collected by the division under this division shall accrue to the state general fund, except as otherwise provided.

3. Barrel tax revenues collected on beer manufactured in this state from a class "A" permittee which owns and operates a brewery located in Iowa shall be credited to the barrel tax fund hereby created in the office of the treasurer of state. Moneys deposited in the barrel tax fund shall not revert to the general fund of the state without a specific appropriation by the general assembly.

87 Acts, ch 95, §1 SF 130
1987 amendment to subsection 3 retroactive to July 1, 1985; 87 Acts, ch 95, §3 SF130
Subsection 3 amended

123.151 Posting notice on drunk driving laws required.

Holders of liquor control licenses, wine permits, or beer permits shall post in a prominent place in the licensed premises notice explaining the operation of and penalties of the laws which prohibit the operation of a motor vehicle by a person who is intoxicated. The size, print size, location, and content of the notice shall be established by rule of the division.

87 Acts, ch 115, §21 SF 374
Section amended

123.183 Wine gallonage tax.

In addition to the annual permit fee to be paid by each class "A" wine permittee, there shall be levied and collected from each class "A" wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale, a tax of one dollar and seventy-five cents for every wine gallon and a like rate for the fractional parts of a wine gallon. A tax shall not be levied or collected on wine sold by one class "A" wine permittee to another class "A" wine permittee. Revenue derived from the wine tax collected on wine manufactured for sale and sold in this state shall be deposited in the gallonage tax fund hereby created in the office of the treasurer of state. Moneys deposited in the gallonage tax fund shall not revert to the general fund of the state without a specific appropriation by the general assembly. All other revenue derived from the wine tax shall be deposited in the liquor control fund established by section 123.53 and shall be transferred by the director of revenue and finance to the general fund of the state.

87 Acts, ch 95, §2 SF 130
1987 amendment retroactive to July 1, 1985; 87 Acts, ch 95, §3 SF130
Section amended

CHAPTER 125

CHEMICAL SUBSTANCE ABUSE

125.9 Powers of director.

The director may:

1. Plan, establish and maintain treatment, intervention and education and prevention programs as necessary or desirable in accordance with the comprehensive substance abuse program.
2. Make contracts necessary or incidental to the performance of the duties and the execution of the powers of the director, including contracts with public and private agencies, organizations and individuals to pay them for services rendered or furnished to substance abusers or intoxicated persons.
3. Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to co-operate with the federal government or any of its agencies and the department in making an application for any grant.

4. Co-ordinate the activities of the department and co-operate with substance abuse programs in this and other states, and make contracts and other joint or co-operative arrangements with state, local or private agencies in this and other states for the treatment of substance abusers and intoxicated persons and for the common advancement of substance abuse programs.

5. Require that a written report, in reasonable detail, be submitted to the director at any time by any agency of this state or of any of its political subdivisions in respect to any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse, which is being conducted by the agency.

6. Submit to the governor a written report of the pertinent facts at any time the director concludes that any agency of this state or of any of its political subdivisions is conducting any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse in a manner not consistent with or which impairs achievement of the objectives of the state plan to combat substance abuse, and has failed to effect appropriate changes in the function or program.

7. Keep records and engage in research and the gathering of relevant statistics.

8. Employ a deputy director who shall be exempt from the merit system. The director may employ other staff necessary to carry out the duties assigned to the director.

9. Do other acts and things necessary or convenient to execute the authority expressly granted to the director.

87 Acts, ch 8, §1 HF 163
Subsection 8 amended

125.21 Chemical substitutes and antagonists programs.

The commission has exclusive power in this state to approve and license chemical substitutes and antagonists programs, and monitor chemical substitutes and antagonists programs to ensure that the programs are operating within the rules established pursuant to this chapter. The commission shall grant approval and license if the requirements of the rules are met and no state funding is requested. This section requires approval of chemical substitutes and antagonists programs conducted by persons exempt from the licensing requirements of this chapter by section 125.13, subsection 2.

The department may:

1. Continuously study and evaluate chemical substitutes and antagonists programs in this state and annually report to the governor and the general assembly on the effectiveness and needs of the programs.

2. Provide advice, consultation, and technical assistance to chemical substitutes and antagonists programs.

3. In its discretion, approve local agencies or bodies to assist it in carrying out the provisions of this chapter.

87 Acts, ch 32, §1 HF 207
Unnumbered paragraph 1 amended

125.59 Transfer of certain revenue—county program funding.

The treasurer of state, on each July 1 for that fiscal year, shall transfer the estimated amounts to be received from section 123.36, subsection 8 and section 123.143, subsection 1 to the department.

1. Of these funds, notwithstanding section 125.13, subsection 1, one-half of the transferred amount shall be used for grants to counties operating a substance abuse program involving only education, prevention, referral or posttreatment services, either with the counties' own employees or by contract with a nonprofit corporation. The grants shall not annually exceed ten thousand dollars to any one county, subject to the following conditions:

a. The money shall be paid to the county after expenditure by the county and submission of the requirements in paragraph "b" on the basis of one dollar for each three dollars spent by the county. The county may submit a quarterly claim for reimbursement.

b. The county shall submit an accounting of the expenditures and shall submit an annual financial report, a description of the program, and the results obtained before June 10 of the same fiscal year in which the money is granted.

If the transferred amount for this subsection exceeds grant requests funded to the ten thousand dollar maximum, the Iowa department of public health may use the remainder to increase grants pursuant to subsection 2.

2. Of these funds, one-half of the transferred amount shall be used for prevention programs in addition to the amount budgeted for prevention programs by the department in the same fiscal year. The department shall use this additional prevention program money for grants to a county, person, or nonprofit agency operating a prevention program. A grant to a county, person, or nonprofit agency is subject to the following conditions:

a. The money shall be paid to the county, person, or nonprofit agency after submission of the requirements in paragraph "b" on the basis of two dollars for each dollar designated for prevention by the county, person, or nonprofit agency.

b. The county, person, or nonprofit agency shall submit a description of the program.

c. The county, person, or nonprofit agency shall submit an annual financial report and the results obtained before June 10 of the same fiscal year in which the money is granted.

The department may consider in-kind contributions received by a county, person, or nonprofit agency for matching purposes required in paragraph "a".

87 Acts, ch 110, §1 HF 258
Subsection 1, NEW unnumbered paragraph 2

CHAPTER 135

IOWA DEPARTMENT OF PUBLIC HEALTH

Obstetrical and newborn indigent patient care program; ch 255A

135.11 Duties of department.

The director of public health shall be the head of the "Iowa Department of Public Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state University of Iowa.

5. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and amend the same when deemed necessary.

6. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

7. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled "Iowa Department of Public Health."

8. Exercise general supervision over the administration and enforcement of the venereal disease law, chapter 140.

9. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation.

10. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

11. Enforce the law relative to the "Practice of Certain Professions Affecting the Public Health," Title VIII.

12. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, and a division of vital statistics, but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

13. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and chapter 125 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

14. Establish standards for, issue permits, and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a physician licensed under chapter 148, 150 or 150A, or a pharmacist licensed under chapter 147. Any person selling, offering for sale, or giving away any venereal disease prophylactics in violation of the standards established by the department shall be fined not exceeding five hundred dollars, and the department shall revoke their permit.

15. Administer the statewide public health nursing and homemaker-home health aide programs by approving grants of state funds to the local boards of health and the county boards of supervisors and by providing guidelines for the approval of the grants and allocation of the state funds.

16. Establish, publish, and enforce rules not inconsistent with the law as necessary to obtain from persons licensed or regulated by the department the data required pursuant to section 145.3 by the state health data commission.

17. Administer chapters 125, 135A, 136A, 136C, 139, 140, 142, 144, and 147A.

18. Issue an annual report to the governor by October 1 of each year.

19. Administer the statewide maternal and child health program and the crippled children's program by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential handicapping conditions and chronic illnesses in accordance with the requirements of Title V of the Social Security Act.

20. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139.35.

21. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including

methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

87 Acts, ch 8, §2 HF 163; 87 Acts, ch 115, §22 SF 374; 87 Acts, ch 225, §202 HF 631
See Code editor's note
Subsection 17 amended
NEW subsections 20 and 21

135.61 Definitions.

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

1. "Affected persons" means, with respect to an application for a certificate of need:

a. The person submitting the application.
b. Consumers who would be served by the new institutional health service proposed in the application.

c. Each institutional health facility or health maintenance organization which is located in the geographic area which would appropriately be served by the new institutional health service proposed in the application. The appropriate geographic service area of each institutional health facility or health maintenance organization shall be determined on a uniform basis in accordance with criteria established in rules promulgated by the department in consultation with the appropriate health systems agency.

d. The designated health systems agencies for the health systems agency area in which the new institutional health service proposed in the application is to be located and for each of the health systems agency areas contiguous thereto, including those in other states.

e. Each institutional health facility or health maintenance organization which, prior to receipt of the application by the department, has formally indicated to the department pursuant to this division an intent to furnish in the future institutional health services similar to the new institutional health service proposed in the application.

f. Any other person designated as an affected person by rules of the department.

2. "Director" means the director of public health, or the director's designee.

3. "Consumer" means any individual whose occupation is other than health services, who has no fiduciary obligation to an institutional health facility, health maintenance organization or other facility primarily engaged in delivery of services provided by persons in health service occupations, and who has no material financial interest in the providing of any health services.

4. "Council" means the state health facilities council established by this division.

5. "Department" means the Iowa department of public health.

6. "Develop", when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

7. "Federal Act" means the national health planning and resources development Act of 1974, United States public law 93-641, as amended to January 1, 1977.

8. "Financial reporting" means reporting by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of services.

9. "Health care facility" is defined as it is defined in section 135C.1.

10. "Health care provider" means a person licensed or certified under chapter 147, 148, 148A, 148C, 149, 150, 150A, 151, 152, 153, 154, 154B, or 155A to provide in this state professional health care service to an individual during that individual's medical care, treatment or confinement.

11. "*Health maintenance organization*" is defined as it is defined in section 514B.1, subsection 3.

12. "*Health services*" means clinically related diagnostic, curative or rehabilitative services, and includes alcoholism, drug abuse and mental health services.

13. "*Health systems agency*" means an entity which is designated and operated in the manner described in the federal Act.

14. "*Health systems plan*" means a detailed statement of goals developed by a health systems agency, which describes a healthful environment and health systems in the area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care at reasonable cost for all residents of the area, and which is responsive to the unique needs and resources of the area.

15. "*Hospital*" is defined as it is defined in section 135B.1, subsection 1.

16. "*Institutional health facility*" means any of the following, without regard to whether the facilities referred to are publicly or privately owned or are organized for profit or not:

a. A hospital.

b. A health care facility.

c. A kidney disease treatment center, including any freestanding hemodialysis unit but not including any home hemodialysis unit.

d. An organized outpatient health facility.

e. An outpatient surgical facility.

f. A community mental health facility.

17. "*Institutional health service*" means any health service furnished in or through institutional health facilities or health maintenance organizations.

18. "*Modernization*" means the alteration, repair, remodeling, replacement or renovation of existing buildings or of the equipment previously installed therein, or both.

19. "*New institutional health service*" or "*changed institutional health service*" means any of the following:

a. The construction, development or other establishment of a new institutional health facility or health maintenance organization.

b. Relocation of an institutional health facility or a health maintenance organization.

c. Any expenditure by or on behalf of an institutional health facility or a health maintenance organization in excess of six hundred thousand dollars which, under generally accepted accounting principles consistently applied, is a capital expenditure, or any acquisition by lease or donation to which this subsection would be applicable if the acquisition were made by purchase.

d. A permanent change in the bed capacity, as determined by the department, of an institutional health facility or a health maintenance organization. For purposes of this paragraph, a change is permanent if it is intended to be effective for one year or more.

e. Any expenditure in excess of two hundred fifty thousand dollars for health services which are or will be offered in or through an institutional health facility or a health maintenance organization at a specific time but which were not offered on a regular basis in or through that institutional health facility or health maintenance organization within the twelve-month period prior to that time.

f. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization or the relocation of one or more health services from one physical facility to another.

g. Any expenditure by or on behalf of an individual health care provider or group of health care providers, in excess of four hundred thousand dollars, made for the purchase or acquisition of a single piece of new equipment which is to be installed and used in a private office or clinic, and for which a certificate of need would be required if the equipment were being purchased or acquired by an

institutional health facility or health maintenance organization, and which is, under generally accepted accounting principles consistently applied, a capital expenditure.

h. Any expenditure by or on behalf of an institutional health facility or a health maintenance organization in excess of four hundred thousand dollars, which is made for the purchase or acquisition of a single piece of new equipment which is to be installed and used in an institutional health facility or a health maintenance organization, and which is, under generally accepted accounting principles consistently applied, a capital expenditure.

20. "Offer", when used in connection with health services, means that an institutional health facility or health maintenance organization holds itself out as capable of providing, or as having the means to provide, specified health services.

21. "Organized outpatient health facility" means a facility, not part of a hospital, organized and operated to provide health care to noninstitutionalized and nonhomebound persons on an outpatient basis; it does not include private offices or clinics of individual physicians, dentists or other practitioners, or groups of practitioners, who are health care providers.

22. "Outpatient surgical facility" means a facility which as its primary function provides, through an organized medical staff and on an outpatient basis to patients who are generally ambulatory, surgical procedures not ordinarily performed in a private physician's office, but not requiring hospitalization, and which is neither a part of a hospital nor the private office of a health care provider who there engages in the lawful practice of surgery.

23. "Technologically innovative equipment" means equipment potentially useful for diagnostic or therapeutic purposes which introduces new technology in the diagnosis or treatment of disease, the usefulness of which is not well enough established to permit a specific plan of need to be developed for the state.

87 Acts, ch 215, §39 HF 594
Subsection 10 amended

135.84 Organ transplant services.

The Iowa department of public health shall adopt rules which require certificate of need review of organ transplant services which have been or will be performed in or through an institutional health facility at a specific time but which were not performed for that specific organ prior to July 1, 1987. Organ transplant services shall not include transplant services which are routinely performed in the course of ordinary operative procedures in institutional health facilities. Each type of organ transplant shall be considered separately.

87 Acts, ch 234, §106 HF 671
NEW section

135.85 through 135.89 Reserved.

135.96 Rules.

Except as otherwise provided in this division, the department shall adopt rules pursuant to chapter 17A necessary to implement this division, subject to approval of the state board of health. Formulation of the rules shall include consultation with Iowa hospice organization representatives and other persons affected by the division.

87 Acts, ch 8, §3 HF 163
Section amended

135.97 through 135.99 Reserved.

DIVISION VIII LEAD ABATEMENT PROGRAM

135.100 Definitions.

For the purposes of this division, unless the context otherwise requires:

1. "Department" means the Iowa department of public health.
2. "Local board" means the local board of health.

87 Acts, ch 55, §1 HF 169
NEW section

135.101 Lead program.

There is established a lead abatement program within the Iowa department of public health. The department shall implement and review programs necessary to eliminate potentially dangerous toxic lead levels in children in Iowa in a year for which funds are appropriated to the department for this purpose.

87 Acts, ch 55, §2 HF 169
NEW section

135.102 Rules.

The department shall adopt rules, pursuant to chapter 17A, regarding the:

1. Implementation of the grant program pursuant to section 135.103.
2. Maintenance of laboratory facilities for the lead abatement program.
3. Maximum blood lead levels in children living in targeted rental dwelling units.
4. Standards and program requirements of the grant program pursuant to section 135.103.
5. Prioritization of proposed lead abatement programs, based on the geographic areas known with children identified with elevated blood lead level resulting from surveys completed by the department.

87 Acts, ch 55, §3 HF 169
NEW section

135.103 Grant program.

The department shall implement a lead abatement grant program which provides matching funds to local boards of health or cities for the program after standards and requirements for the local program are developed. The state shall provide funds to approved programs on the basis of three dollars for each one dollar designated by the local board of health or city for the program for the first two years of a program, and funds on the basis of one dollar for each one dollar designated by the local board of health or city for the program for the third and fourth years of the program if such funding is determined necessary by the department for such subsequent years. A lead abatement program grant shall not exceed a time period of four years.

87 Acts, ch 55, §4 HF 169
NEW section

135.104 Requirements.

The program by a local board of health or city receiving matching funding for an approved lead abatement grant program shall include:

1. A public education program about lead poisoning and dangers of lead poisoning to children.
2. An effective outreach effort to ensure availability of services in the predicted geographic area.
3. A screening program for children, with emphasis on children less than five years of age.
4. Access to laboratory services for lead analysis.
5. A program of referral of identified children for assessment and treatment.
6. An environmental assessment of suspect dwelling units.
7. Abatement surveillance to ensure correction of the identified hazardous settings.

8. A plan of intent to continue the program on a maintenance basis after the grant is discontinued.

87 Acts, ch 55, §5 HF 169
NEW section

135.105 Department duties.

The department shall:

1. Coordinate the lead abatement program with the department of natural resources, the University of Iowa poison control program, the mobile and regional child health speciality clinics, and any agency or program known for a direct interest in lead levels in the environment.

2. Survey geographic areas not included in the grant program pursuant to section 135.103 periodically to determine prioritization of such areas for future grant programs.

87 Acts, ch 55, §6 HF 169
NEW section

CHAPTER 135A

HOSPITAL AND HEALTH FACILITY SURVEY

135A.4 General powers and duties.

In carrying out the purposes of the chapter, the director is authorized and directed:

1. To require reports, make inspections and investigations, and prescribe rules as the director deems necessary. No reports shall be required, inspections and investigations made, or rules adopted which would have the effect of discriminating against a hospital or other institution or facilities contemplated under this chapter, solely by reason of the school or system of practice employed or permitted to be employed by physicians there, if the school or system of practice is recognized by the laws of this state.

2. To provide such methods of administration, appoint an administrator and other personnel of the division and take such other action as may be necessary to comply with the requirements of the federal Act and the regulations thereunder.

3. To procure in the director's discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties.

4. To the extent that the director considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private.

5. To accept on behalf of the state and to deposit with the state treasurer any grant, gift or contribution, subject to the approval by the executive council, made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purposes.

6. On November 1 of each year, to make an annual report to the governor on activities and expenditures pursuant to this chapter.

87 Acts, ch 115, §23 SF 374
Subsection 1 amended

135A.6 Survey and planning activities.

The director shall make an inventory of existing hospitals and other health facilities, including public, nonprofit and proprietary hospitals and other health facilities, to survey the need for construction of hospitals and other health facilities, and, on the basis of the inventory and survey, shall develop a program for the construction of public and other nonprofit hospitals and other health facilities which will, in conjunction with existing facilities, afford the necessary

physical facilities for furnishing adequate hospital and other health facility services, and similar services to all the people of the state.

87 Acts, ch 115, §24 SF 374
Section amended

135A.9 State plan.

The director shall prepare and submit to the surgeon general a state plan which shall include the hospital and other health facilities construction program developed under this chapter and which shall provide for the establishment, administration and operation of hospital and other health facilities construction activities in accordance with the requirements of the federal Act and regulations under it. The director shall, prior to the submission of the plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included, and hold a public hearing at which all persons or organizations with a legitimate interest in the plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the director shall make the plan or a copy of it available upon request to all interested persons or organizations. The director shall from time to time review the hospital and other health facilities construction program and submit to the surgeon general any modifications of it which the director finds necessary and may submit to the surgeon general modifications of the state plan, not inconsistent with the requirements of the federal Act, as the director deems advisable.

87 Acts, ch 115, §25 SF 374
Section amended

CHAPTER 135B

LICENSURE AND REGULATION OF HOSPITALS

135B.11 Functions of hospital licensing board—compensation and expenses.

The hospital licensing board shall have the following responsibilities and duties:

1. To consult and advise with the Iowa department of public health in matters of policy affecting administration of this chapter, and in the development of rules, regulations and standards provided for hereunder.
2. To review and approve rules and standards authorized under this chapter prior to their approval by the state board of health and adoption by the department of inspections and appeals.

Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

87 Acts, ch 8, §4 HF 163
Subsection 2, unnumbered paragraph 1 amended

135B.31 Exceptions.

Nothing in this division is intended or should affect in any way that obligation of public hospitals under chapter 347 or municipal hospitals, as well as the state hospital at Iowa City, to provide medical or obstetrical and newborn care for indigent persons under chapter 255 or 255A, wherein medical treatment is provided by hospitals of that category to patients of certain entitlement, nor to the operation by the state of mental or other hospitals authorized by law. Nothing herein shall in any way affect or limit the practice of dentistry or the practice of oral surgery by a dentist.

87 Acts, ch 233, §427 SF 511
Section amended

CHAPTER 135C

HEALTH CARE FACILITIES

135C.1 Definitions.

1. "*Residential care facility*" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis.

2. "*Intermediate care facility*" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity require nursing services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

3. "*Skilled nursing facility*" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, and nursing services, the need for which is certified by a physician, to three or more individuals not related to the administrator or owner thereof within the third degree of consanguinity who by reason of illness, disease, or physical or mental infirmity require continuous nursing care services and related medical services, but do not require hospital care. The nursing care services provided must be under the direction of a registered nurse on a twenty-four-hours-per-day basis.

4. "*Health care facility*" or "*facility*" means any residential care facility, intermediate care facility, or skilled nursing facility.

5. "*Licensee*" means the holder of a license issued for the operation of a facility, pursuant to this chapter.

6. "*Resident*" means an individual admitted to a health care facility in the manner prescribed by section 135C.23.

7. "*Physician*" has the meaning assigned that term by section 135.1, subsection 5.

8. "*House physician*" means a physician who has entered into a two-party contract with a health care facility to provide services in that facility.

9. "*Director*" means the director of the department of inspections and appeals, or the director's designee.

10. "*Department*" means the department of inspections and appeals.

11. "*Person*" means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

12. "*Governmental unit*" means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

13. "*Direction*" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

14. "*Supervision*" means direct oversight and inspection of the act of accomplishing a function or activity.

15. "*Nursing care*" means those services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

16. "*Social services*" means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility, and minimizing stress arising from that circumstance.

17. "*Rehabilitative services*" means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

18. "*Intermediate care facility for the mentally ill*" means an intermediate care facility licensed under this chapter and designed primarily to provide services to individuals with mental illness.

19. "*Mental illness*" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life.

87 Acts, ch 194, §1 HF 669
NEW subsections 18 and 19

135C.2 Purpose—rules—special classifications—protection and advocacy agency.

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare and safety of such individuals.

2. Rules and standards prescribed, promulgated and enforced under this chapter shall not be arbitrary, unreasonable or confiscatory and the department or agency prescribing, promulgating or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. The department shall establish by administrative rule, within the intermediate care facility category, a special classification for facilities intended to serve mentally retarded individuals, and within the residential care facility category, a special classification for residential facilities intended to serve mentally ill individuals. The department may also establish by administrative rule other classifications within that category, or special classifications within the residential care facility or skilled nursing facility categories, for facilities intended to serve individuals who have special health care problems or conditions in common. Rules establishing a special classification shall define the problem or condition to which the classification is relevant and establish requirements for an approved program of care commensurate with the problem or condition, and may grant special variances or considerations to facilities licensed within the classification so established.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the developmental disabilities Act of 1984, and Pub. L. No. 99-319, the protection and advocacy for mentally ill individuals Act of 1986, is recognized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No. 98-527 and Pub. L. No. 99-319 and in the assurances of the governor of the state.

87 Acts, ch 234, §426 HF 671
NEW subsection 4

135C.16 Inspections.

1. In addition to the inspections required by sections 135C.9 and 135C.38 the department shall make or cause to be made such further unannounced inspec-

tions as it may deem necessary to adequately enforce this chapter, including at least one general inspection in each calendar year of every licensed health care facility in the state made without providing advance notice of any kind to the facility being inspected. The inspector shall show identification to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. Any employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section 135C.38 shall be disciplined as determined by the director, except that if the employee is employed pursuant to chapter 19A the discipline shall not exceed that authorized pursuant to that chapter.

2. The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing the alteration or additions or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with the department's rules and standards. When the plans and specifications have been properly approved by the department or other appropriate state agency, the facility or the portion of the facility constructed or altered in accord with the plans and specifications shall not for a period of at least five years from completion of the construction or alteration be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications. When construction or alteration of a facility or portion of a facility has been completed in accord with plans and specifications submitted as required by this subsection and properly approved by the department or other appropriate state agency, and it is discovered that the facility or portion of a facility is not in compliance with a requirement of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, and the deficiency was apparent from the plans and specifications submitted but was not noted or objected to by the department or other appropriate state agency, the department or agency responsible for the oversight shall either waive the requirement or reimburse the licensee or applicant for any costs which are necessary to bring the new or reconstructed facility or portion of a facility into compliance with the requirement and which the licensee or applicant would not have incurred if the facility or portion of the facility had been constructed in compliance with the requirements of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted. If within two years from the completion of the construction or alteration of the facility or portion thereof, a department or agency of the state orders that the new or reconstructed facility or portion thereof be brought into compliance with the requirements of this chapter or the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, the state shall have a claim for damages to the extent of any reimbursement paid to the licensee or applicant against any person who designed the facility or portion thereof for negligence in the preparation of the plans and specifications therefor, subject to all defenses based upon the negligence of the state in reviewing and approving those plans and specifications, but not thereafter.

The provisions of this subsection shall not apply where the deficiency presents a clear and present danger to the safety of the residents of the facility.

3. An inspector of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. An inspector of the department of human services shall have the same right with respect to any facility where one or more

residents are cared for entirely or partially at public expense, and an investigator of the designated protection and advocacy agency shall have the same right with respect to any facility where one or more residents have developmental disabilities or mental illnesses, and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph "b" shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. If any such inspector has probable cause to believe that any institution, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon producing identification that the individual is an inspector is denied entry thereto for the purpose of making an inspection, the inspector may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.

87 Acts, ch 234, §427 HF 671
Subsection 3 amended

135C.17 Duties of other departments.

It shall be the duty of the department of human services, state fire marshal, and the officers and agents of other state and local governmental units, and the designated protection and advocacy agency to assist the department in carrying out the provisions of this chapter, insofar as the functions of these respective offices and departments are concerned with the health, welfare, and safety of any resident of any health care facility. It shall be the duty of the department to cooperate with the protection and advocacy agency by responding to all reasonable requests for assistance and information as required by federal law and this chapter.

87 Acts, ch 234, §428 HF 671
Section amended

135C.19 Public disclosure of inspection findings—posting of citations.

1. Following an inspection of a health care facility by the department pursuant to this chapter, the department's final findings with respect to compliance by the facility with requirements for licensing shall be made available to the public in a readily available form and place. Other information relating to a health care facility obtained by the department which does not constitute the department's findings from an inspection of the facility shall not be made available to the public except in proceedings involving the citation of a facility for a violation under section 135C.40, or the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall be confidential.

2. Each citation for a class I or class II violation which is issued to a health care facility and which has become final, or a copy or copies thereof, shall be prominently posted as prescribed in rules to be adopted by the department, until the violation is corrected to the department's satisfaction. The citation or copy shall be posted in a place or places in plain view of the residents of the facility cited, persons visiting the residents, and persons inquiring about placement in the facility.

A copy of each citation required to be posted by this subsection shall be sent by the department to the department of human services and to the designated protection and advocacy agency if the facility has one or more residents with developmental disabilities or mental illness.

3. If the facility cited subsequently advises the department of human services that the violation has been corrected to the satisfaction of the department of health, the department of human services must maintain this advisory in the same file with the copy of the citation. The department of human services shall

not disseminate to the public any information regarding citations issued by the department of health, but shall forward or refer such inquiries to the department of health.

87 Acts, ch 234, §429 HF 671

Former subsection 3 amended and included in subsection 2

Following paragraph numbered as subsection 3

135C.23 Express requirements for admission or residence.

No individual shall be admitted to or permitted to remain in a health care facility as a resident, except in accordance with the requirements of this section.

1. Each resident shall be covered by a contract executed at the time of admission or prior thereto by the resident, or the resident's legal representative, and the health care facility, except as otherwise provided by subsection 5 with respect to residents admitted at public expense to a county care facility operated under chapter 253. Each party to the contract shall be entitled to a duplicate original thereof, and the health care facility shall keep on file all contracts which it has with residents and shall not destroy or otherwise dispose of any such contract for at least one year after its expiration. Each such contract shall expressly set forth:

a. The terms of the contract.

b. The services and accommodations to be provided by the health care facility and the rates or charges therefor.

c. Specific descriptions of any duties and obligations of the parties in addition to those required by operation of law.

d. Any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter, nor contain any disclaimer of responsibility for injury to the resident, or to relatives or other persons visiting the resident, which occurs on the premises of the facility or, with respect to injury to the resident, which occurs while the resident is under the supervision of any employee of the facility whether on or off the premises of the facility.

2. A health care facility shall not knowingly admit or retain a resident:

a. Who is dangerous to the resident or other residents.

b. Who is in an acute stage of alcoholism, drug addiction, mental illness, or an active state of communicable disease.

c. Whose condition or conduct is such that the resident would be unduly disturbing to other residents.

d. Who is in need of medical procedures, as determined by a physician, or services which cannot be or are not being carried out in the facility.

This section does not prohibit the admission of a patient with a history of dangerous or disturbing behavior to an intermediate care facility, skilled nursing facility, or county care facility when the intermediate care facility, skilled nursing facility, or county care facility has a program which has received prior approval from the department to properly care for and manage the patient. An intermediate care facility, skilled nursing facility, or county care facility is required to transfer or discharge a resident with dangerous or disturbing behavior when the intermediate care facility, skilled nursing facility, or county care facility cannot control the resident's dangerous or disturbing behavior. The department, in coordination with the state mental health and mental retardation commission, shall adopt rules pursuant to chapter 17A for programs to be required in intermediate care facilities, skilled nursing facilities, and county care facilities that admit patients or have residents with histories of dangerous or disturbing behavior.

3. Except in emergencies, a resident who is not essentially capable of managing the resident's own affairs shall not be transferred out of a health care facility

or discharged for any reason without prior notification to the next of kin, legal representative, or agency acting on the resident's behalf. When such next of kin, legal representative, or agency cannot be reached or refuses to co-operate, proper arrangements shall be made by the facility for the welfare of the resident before the resident's transfer or discharge.

4. No owner, administrator, employee, or representative of a health care facility shall pay any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, to any person for residents referred to such facility, nor accept any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, for professional or other services or supplies purchased by the facility or by any resident, or by any third party on behalf of any resident, of the facility.

5. Each county which maintains a county care facility under chapter 253 shall develop a statement in lieu of, and setting forth substantially the same items as, the contracts required of other health care facilities by subsection 1. The statement must be approved by the county board of supervisors and by the department. When so approved, the statement shall be considered in force with respect to each resident of the county care facility.

87 Acts, ch 190, §1 HF 210

Subsection 2, unnumbered paragraph 2 amended

135C.25 Care review committee appointments—duties.

1. Each health care facility shall have a care review committee whose members shall be appointed by the director of the department of elder affairs or the director's designee. A person shall not be appointed a member of a care review committee for a health care facility unless the person is a resident of the service area where the facility is located. The care review committee for any facility caring primarily for persons who are mentally ill, mentally retarded, or developmentally disabled shall only be appointed after consultation with the administrator of the division of mental health, mental retardation, and developmental disabilities of the department of human services on the proposed appointments. Recommendations to the director or the director's designee for membership on care review committees are encouraged from any agency, organization, or individual. The administrator of the facility shall not be appointed to the care review committee and shall not be present at committee meetings except upon request of the committee.

2. Each care review committee shall periodically review the needs of each individual resident of the facility and shall perform the functions pursuant to sections 135C.38 and 249D.44.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a care review committee member, unless permission for this disclosure is refused in writing by the family member. The facility shall provide a form on which a family member may indicate a refusal to grant this permission.

87 Acts, ch 70, §1 HF 136

NEW subsection 3

135C.38 Inspections upon complaints.

1. Upon receipt of a complaint made in accordance with section 135C.37, the department or care review committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint. The department may refer to the care review committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee. In any case, the complainant shall be promptly informed of the result of any action taken by the department or

committee in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

2. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters complained of; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or committee, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The dignity of the resident shall be given first priority by the inspector and others.

3. If upon an inspection of a facility by its care review committee, pursuant to this section, the committee advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the committee shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the committee's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

87 Acts, ch 234, §430 HF 671
Subsection 1 amended

CHAPTER 135D

MOBILE HOMES AND PARKS

135D.22 Annual tax.

The owner of each mobile home shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the mobile home is used solely for student housing or when the owner is the state of Iowa or a subdivision thereof, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

1. Multiply the number of square feet of floor space each mobile home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the mobile home shall be used as shown on the certificate of registration and title, but not including any area occupied by a hitching device.

2. If the owner of the mobile home is an Iowa resident, was totally disabled, as defined in section 425.17, subsection 6 on or before December 31 of the base year, is a surviving spouse having attained the age of fifty-five years on or before December 31 of the base year or has attained the age of sixty-five years on or before December 31 of the base year and has an income when included with that of a spouse which is less than five thousand dollars per year, no annual tax shall be imposed on the mobile home. If the income is five thousand dollars or more but less than twelve thousand dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot
\$5,000 - 5,999.99	6.0 cents
6,000 - 6,999.99	10.0
7,000 - 7,999.99	12.0
8,000 - 8,999.99	14.0
9,000 - 11,999.99	15.0

For purposes of this subsection "income" means income as defined in section 425.17, subsection 1, and "base year" means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The mobile home reduced rate of tax shall only be allowed on the mobile home in which the claimant is residing at the time in which the claim for a reduced rate of tax is filed.

3. The amount thus computed shall be the annual tax for all mobile homes.

4. The tax shall be figured to the nearest even whole dollar.

5. A claim for credit for mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the mobile home taxes are due and, with the exception of a claim filed on behalf of a deceased claimant by the claimant's legal guardian, spouse, or attorney, or by the executor or administrator of the claimant's estate, contains an affidavit of the claimant's intent to occupy the mobile home for six months or more during the fiscal year beginning in the calendar year in which the claim is filed. The county treasurer shall submit the claim to the director of revenue and finance on or before August 1 each year.

The forms for filing the claim shall be provided by the department of revenue and finance. The forms shall require information as determined by the department.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue and finance, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for credit or reimbursement. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

The director of revenue and finance shall certify the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 2.

The amounts due each county shall be paid by the department of revenue and finance on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 135D.25.

There is appropriated annually from the general fund of the state to the department of revenue and finance an amount sufficient to carry out this subsection.

87 Acts, ch 210, §1 SF 101; 87 Acts, ch 198, §1 HF 374

See Code editor's note at §135.11

Amendment under 87 Acts, ch 210, §1, takes effect July 1, 1988; 87 Acts, ch 210, §8 SF 101

Section amended

Subsection 2, unnumbered paragraph 1 amended

135D.23 Exemptions—prorating tax.

The manufacturer's and dealer's inventory of mobile homes not in use as a place of human habitation shall be exempt from the annual tax. All travel trailers shall be exempt from this tax. Mobile homes and travel trailers in the inventory of manufacturers and dealers shall be exempt from personal property tax. Mobile

homes coming into Iowa from out of state shall be liable for the tax computed pro rata to the nearest whole month, for the time such mobile home is actually situated in Iowa.

87 Acts, ch 210, §2 SF 101

Amendment takes effect July 1, 1988; 87 Acts, ch 210, §8 SF 101

Section amended

135D.24 Collection of tax.

1. The annual tax is due and payable to the county treasurer on or after July 1 in each fiscal year and is collectible in the same manner and at the same time as ordinary taxes as provided in sections 445.36, 445.37, and 445.39. Penalties at the rate prescribed by law shall accrue on unpaid taxes but the penalty shall not exceed forty-eight percent. Both installments of taxes may be paid at one time. The September installment represents a tax period beginning July 1 and ending December 31. The March installment represents a tax period beginning January 1 and ending June 30. A mobile home, coming into this state from outside the state, put in use from a dealer's inventory, or put in use at any time after July 1 or January 1, is subject to the taxes prorated for the remaining unexpired months of the tax period, but the purchaser is not required to pay the tax at the time of purchase. A penalty attaches the following April 1 for taxes prorated on or after October 1. A penalty attaches the following October 1 for taxes prorated on or after April 1. If the taxes are not paid, the county treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9. The owner of a mobile home who sells the mobile home between July 1 and December 31 and obtains a tax clearance statement is responsible only for the September tax payment and is not required to pay taxes for subsequent tax periods. Interest added as a penalty for delinquent taxes shall be calculated to the nearest whole dollar.

2. Mobile home owners upon issuance of a certificate of title or upon transporting to a new site shall file the address, township, and school district, of the location where the mobile home is parked with the county treasurer's office. Failure to comply is punishable as set out in section 135D.18.

3. Each mobile home park owner shall notify monthly the county treasurer concerning any mobile home or manufactured home arriving in or departing from the park without a tax clearance statement. The records of the owner shall be open to inspection by a duly authorized representative of any law enforcement agency. Any property owner, manager or tenant shall report to the county treasurer mobile homes parked upon any property owned, managed, or rented by that person.

4. The tax is a lien on the vehicle senior to any other lien upon it. The mobile home bearing a current registration issued by any other state and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period is not subject to Iowa tax. However, when one or more persons occupying a mobile home bearing a foreign registration are employed in this state, there is no exemption from the Iowa tax. This tax is in lieu of all other taxes general or local on a mobile home.

5. A modular home as defined by this chapter is not subject to or assessed the annual tax pursuant to this section, but shall be assessed and taxed as real estate pursuant to chapter 427.

6. Before a mobile home may be moved from its present site, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period. However, a tax clearance statement shall not be required for a mobile home in a manufacturer's or dealer's stock which is not used as a place for human habitation. A tax clearance form is not required to move an abandoned mobile home. A tax clearance form is not required in eviction cases provided the

mobile home park owner or manager advises the county treasurer that the tenant is being evicted. If a dealer acquires a mobile home from a person other than a manufacturer, the person shall provide a tax clearance statement in the name of the owner of record to the dealer. The tax clearance statement shall be provided by the county treasurer and shall be made out in quadruplicate. Two copies are to be provided to the company or person transporting the mobile home with one copy to be carried in the vehicle transporting the mobile home. One copy is to be forwarded to the county treasurer of the county in which the mobile home is to be relocated and one copy is to be retained by the county treasurer issuing the tax clearance statement.

87 Acts, ch 210, §3-5 SF 101
 Amendments take effect July 1, 1988; 87 Acts, ch 210, §8 SF 101
 Subsection 1 stricken and rewritten
 Subsections 5 and 6 amended

135D.25 Apportionment and collection of taxes.

The tax and penalties collected under the provisions of section 135D.24, shall be apportioned in the same manner as though they were the proceeds of taxes levied on real property at the same location as such mobile home.

Chapters 446, 447, and 448 apply to the sale of a mobile home for the collection of delinquent taxes and penalties, the redemption of a mobile home sold for the collection of delinquent taxes and penalties, and the execution of a tax sale certificate of title for the purchase of a mobile home sold for the collection of delinquent taxes and penalties in the same manner as though a mobile home were real property within the meaning of these chapters to the extent consistent with this chapter. The certificate of title shall be issued by the county treasurer. The county treasurer shall charge ten dollars for each certificate of title except that the county treasurer shall issue a tax sale certificate of title to the county at no charge.

When a mobile home is removed from the county where delinquent taxes, both regular or special, are owing, or when it is administratively impractical to pursue tax collection through the remedies of this section, all taxes, both regular or special, penalties, interest, and costs shall be abated by resolution of the county board of supervisors. The resolution shall direct the county treasurer to strike from the tax books the reference to that mobile home.

87 Acts, ch 210, §6, 7 SF 101
 Amendments take effect July 1, 1988; 87 Acts, ch 210, §8 SF 101
 Unnumbered paragraph 2 amended
 NEW unnumbered paragraph 3

CHAPTER 135E

NURSING HOME ADMINISTRATORS

135E.1 Definitions.

For the purposes of this division, and as used herein:

1. *"Board"* means the Iowa state board of examiners for nursing home administrators hereinafter created.

2. *"Nursing home administrator"* means a person who administers, manages, supervises, or is in general administrative charge of a nursing home whether or not such individual has an ownership interest in such home and whether or not the individual's functions and duties are shared with one or more individuals. A member of a board of directors, unless also serving in a supervisory or managerial capacity, shall not be considered a nursing home administrator.

3. *"Nursing home"* means an institution or facility, or part thereof, licensed as an intermediate care facility or a skilled nursing facility, but not including an intermediate care facility for the mentally retarded or an intermediate care facility for the mentally ill, defined as such for licensing purposes under state law

or pursuant to the rules for nursing homes promulgated by the state board of health, in consultation with the department of inspections and appeals, whether proprietary or nonprofit, including but not limited to, nursing homes owned or administered by the federal or state government or an agency or political subdivision of government.

87 Acts, ch 194, §2 HF 669
Subsection 3 amended

CHAPTER 135G

BIRTH CENTERS

135G.1 Licensure and regulation of birth centers—legislative intent.

It is the intent of the general assembly to provide for the protection of public health and safety in the establishment, construction, maintenance, and operation of birth centers by providing for licensure of birth centers and for the development, establishment, and enforcement of minimum standards with respect to birth centers.

87 Acts, ch 200, §1 HF 328
NEW section

135G.2 Definitions.

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

1. "*Birth center*" means any facility, institution, or place, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur away from the mother's usual residence following a normal, uncomplicated, low-risk pregnancy.

2. "*Clinical staff*" means individuals employed full time or part time by a birth center who are licensed or certified to provide care at childbirth, which includes the clinical director.

3. "*Consultant*" means a physician licensed under chapter 148, 150, or 150A, who agrees to provide medical and obstetrical advice and services to a birth center and clients of the birth center, and who either:

a. Is certified or eligible for certification by the American board of obstetrics and gynecology, or

b. Has hospital obstetrical privileges.

4. "*Department*" means the department of inspections and appeals.

5. "*Governing body*" means any individual, group, corporation, or institution which is responsible for the overall operation and maintenance of a birth center.

6. "*Political subdivision*" means the state or any county, municipality, or other entity or subdivision of government.

7. "*Licensed birth center*" means a birth center licensed in accordance with section 135G.4.

8. "*Low-risk pregnancy*" means a pregnancy which is expected to result in an uncomplicated birth, as determined through risk criteria developed by departmental rule, and which is accompanied by adequate prenatal care.

9. "*Person*" means person as defined in section 4.1, subsection 13.

10. "*Premises*" means those buildings, beds, and facilities located at the main address of the licensee and all other buildings, beds, and facilities for the provision of maternity care located in such reasonable proximity to the main address of the licensee as to appear to the public to be under the dominion and control of the licensee.

87 Acts, ch 200, §2 HF 328
NEW section

135G.3 Licensure requirement for birth centers.

1. A person or governmental unit shall not establish, conduct, or maintain a birth center in this state without first obtaining a license under section 135G.4.

2. A person shall not use or advertise to the public, in any way or by any medium whatsoever, any facility as a birth center unless such facility has first secured a license under section 135G.4.

87 Acts, ch 200, §3 HF 328
NEW section

135G.4 Licensure—issuance, renewal, denial, suspension, revocation—fees.

1. *a.* The department shall not issue a birth center license to any applicant until:

(1) The department has ascertained that the staff and equipment of the birth center are adequate to provide the care and services required of a birth center.

(2) The birth center has been inspected by the state fire marshal or a deputy appointed by the fire marshal for that purpose, who may be a member of a municipal fire department, and the department has received either a certificate of compliance or a provisional certificate of compliance by the birth center with the fire hazard and fire safety rules and standards of the department as promulgated by the fire marshal. The state fire marshal shall adopt rules relating to fire hazard and fire safety standards pursuant to chapter 17A which shall not exceed the provision of smoke alarms, fire extinguishers, sprinkler systems, and fire escape routes and necessary rules which parallel state or local building code rules.

The rules and standards promulgated by the fire marshal shall be substantially in keeping with the latest generally recognized safety criteria for the birth centers covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima facie evidence.

The state fire marshal or the fire marshal's deputy may issue successive provisional certificates of compliance for periods of one year each to a birth center which is in substantial compliance with the applicable fire-hazard and fire-safety rules and standards, upon satisfactory evidence of an intent, in good faith, by the owner or operator of the birth center to correct the deficiencies noted upon inspection within a reasonable period of time as determined by the state fire marshal or the fire marshal's deputy. Renewal of a provisional certificate shall be based on a showing of substantial progress in eliminating deficiencies noted upon the last previous inspection of the birth center without the appearance of additional deficiencies other than those arising from changes in the fire hazard and fire safety rules, regulations and standards which have occurred since the last previous inspection, except that substantial progress toward achievement of a good faith intent by the owner or operator to replace the entire facility within a reasonable period of time, as determined by the state fire marshal or the fire marshal's deputy, may be accepted as a showing of substantial progress in eliminating deficiencies, for the purposes of this section.

b. A provisional license may be issued to any birth center that is in substantial compliance with this chapter and with the rules adopted by the department. A provisional license may be granted for a period of no more than one year from the effective date of rules adopted by the department, shall expire automatically at the end of its term, and shall not be renewed.

c. A license, unless sooner suspended or revoked, automatically expires one year from its date of issuance and is renewable upon application for renewal and payment of the fee prescribed, provided the applicant and the birth center meet the requirements established under this chapter and by rules adopted by the department. A complete application for renewal of a license shall be made ninety days prior to expiration of the license on forms provided by the department.

2. An application for a license, or renewal thereof, shall be made to the department upon forms provided by the department and shall contain information the department may require.

3. *a.* Each application for a birth center license, or renewal thereof, shall be accompanied by a license fee. Fees shall be established by rule of the department. Such fees shall be deposited in the general fund of the state.

b. The fees established shall be based on actual costs incurred by the department in the administration of its duties under this chapter.

4. Each license is valid only for the person or governmental unit to whom or which the license is issued and is not subject to sale, assignment, or other transfer, voluntary, or involuntary; and is not valid for any premises other than those for which the license was originally issued.

5. Each license shall be posted in a conspicuous place on the licensed premises.

6. The department may deny, suspend, or revoke a license when the department finds that there has been a substantial failure to comply with the requirements established under this chapter or by administrative rule.

87 Acts, ch 200, §4 HF 328
NEW section

135G.5 Administration of birth center.

1. Each licensed birth center shall have a governing body which is responsible for the overall operation and maintenance of the birth center.

a. The governing body shall develop a table of organization which shows the structure of the birth center and identifies the governing body, the birth center director, the clinical director, the clinical staff, the medical consultant, and other administrative positions.

b. The governing body shall develop and make available to staff, clinicians, consultants, and licensing authorities, a manual which documents policies, procedures, and protocols, including the roles and responsibilities of all personnel.

2. There shall be an adequate number of licensed personnel as determined by departmental rule to provide clinical services needed by mothers and newborns and a sufficient number of qualified personnel as determined by departmental rule to provide services for families and to maintain the birth center.

3. All clinical staff members and consultants shall hold current and valid licenses from this state to practice their respective disciplines. All services provided to and procedures performed on a client of a birth center, which are required by statute to be performed by a licensed or certified person, shall be performed only by a person so licensed or certified.

4. The governing body shall adopt bylaws for the birth center which shall include recommendations for clinical staff or consultation appointments, delineation of clinical privileges, and the organization of the clinical staff.

87 Acts, ch 200, §5 HF 328
NEW section

135G.6 Birth center and equipment—requirements.

1. A licensed birth center shall be so designed to assure adequate provision for birthing rooms, bath and toilet facilities, storage areas for supplies and equipment, examination areas, and reception or family areas. Handwashing facilities shall be in, or immediately adjacent to, all examining areas and birthing rooms.

a. A licensed birth center shall be equipped with those items needed to provide low-risk maternity care and readily available equipment to initiate emergency procedures in life-threatening events to mother and baby, as defined by departmental rule.

b. Provisions shall be made, on or off the premises, for laundry, sterilization of supplies and equipment, laboratory examinations, and light snacks. If a food service is provided, special requirements shall be met as defined by departmental rule.

a. A licensed birth center shall be maintained in a safe, clean, and orderly manner.

b. The governing body shall ensure that there is compliance with fire safety provisions required by the state.

87 Acts, ch 200, §6 HF 328
NEW section

135G.7 Minimum standards for birth centers—rules and enforcement.

The department shall adopt rules pursuant to chapter 17A to administer this chapter. The rules shall be subject to approval by the board of health prior to adoption by the department of inspections and appeals. The department shall adopt and enforce rules setting minimum standards for birth centers. However, the standards shall parallel and shall not exceed standards adopted by the maternity center association, and state and local building codes where applicable, including:

1. Sufficient numbers and qualified types of personnel and occupational disciplines are available at all times to provide necessary and adequate patient care and safety.

2. Infection control, housekeeping, sanitary conditions, disaster plan, and medical record procedures which adequately protect patient care and provide safety are established and implemented.

3. Licensed birth centers are established, organized, and operated consistent with established programmatic standards in accordance with the maternity center association.

87 Acts, ch 200, §7 HF 328
NEW section

135G.8 Selection of clients—*informed consent*.

1. a. A licensed birth center may accept only those patients who are expected to have normal pregnancies, labors, and deliveries.

b. The criteria for the selection of clients and the establishment of risk status shall be defined by departmental rule, which shall reflect risk status standards adopted by the maternity center association.

2. a. A patient may not be accepted for care until the patient has signed a client informed-consent form.

b. The department shall develop a client informed-consent form to be used by the center to inform the client of the benefits and risk related to childbirth outside a hospital.

87 Acts, ch 200, §8 HF 328
NEW section

135G.9 Education and orientation for birth center clients and their families.

1. The clients and their families shall be fully informed of the policies and procedures of the licensed birth center, including, but not limited to, policies and procedures on:

- a. The selection of clients.
- b. The expectation of self-help and family/client relationships.
- c. The qualifications of the clinical staff.
- d. The transfer to a licensed hospital.
- e. The philosophy of childbirth care and the scope of services.
- f. The customary length of stay after delivery.

2. The clients shall be prepared for childbirth and childbearing by education in:

- a. The course of pregnancy and normal changes occurring during pregnancy.
- b. The need for prenatal care.
- c. Nutrition.
- d. The effects of smoking and substance abuse.
- e. Labor and delivery.

f. The care of the newborn.

87 Acts, ch 200, §9 HF 328
NEW section

135G.10 Prenatal care of birth center clients.

1. A licensed birth center shall ensure that its clients have adequate prenatal care, as defined by the department, and shall ensure that serological tests are administered as required by this chapter.

2. Records of prenatal care shall be maintained for each client and shall be available during labor and delivery.

87 Acts, ch 200, §10 HF 328
NEW section

135G.11 Performance of laboratory and surgical services—use of anesthetic and chemical agents.

1. *Laboratory services.* A licensed birth center may collect specimens for those tests that are required under protocol. A licensed birth center staff member may perform simple laboratory tests, as defined by administrative rule.

2. *Surgical services.* Surgical procedures shall be limited to those normally performed during uncomplicated childbirths, such as episiotomies and repairs and shall not include operative obstetrics or caesarean sections.

3. *Administration of analgesia and anesthesia.* General and conduction anesthesia may not be administered at a licensed birth center. Systemic analgesia may be administered, and local anesthesia for pudendal block and episiotomy repair may be performed if procedures are outlined by the clinical staff.

4. *Intrapartal use of chemical agents.* Labor may not be inhibited, stimulated, or augmented with chemical agents during the first or second stage of labor unless prescribed by personnel with statutory authority to do so and unless in connection with and prior to emergency transport.

87 Acts, ch 200, §11 HF 328
NEW section

135G.12 Agreements with consultants for advice or services—maintenance.

1. A licensed birth center shall maintain in writing a consultation agreement, signed within the current license year, with each consultant who has agreed to provide advice and services to the birth center and clients of the birth center, as requested, which shall include emergency backup services.

2. Consultation may be provided on-site or by telecommunication as required by clinical and geographic conditions.

3. The consultation agreement shall provide for a minimum of two prenatal visits between each patient and a consultant.

87 Acts, ch 200, §12 HF 328
NEW section

135G.13 Transfer and transport of clients to hospitals.

1. If complications arise during labor, the client shall be transferred to a hospital.

2. Each licensed birth center shall make arrangements with a local ambulance service for the transport of emergency patients to a hospital. Such arrangements shall be documented in the policy and procedures manual of the birth center if the birth center does not own or operate a licensed ambulance. The policy and procedures manual shall also contain specific protocols for the transfer of any patient to a licensed hospital.

3. A licensed birth center shall identify neonatal-specific transportation services, including ground and air ambulances, list particular qualifications of such services, and have the telephone numbers for access to these services clearly listed and immediately available.

4. Annual assessments of the transportation services and transfer protocols shall be made and documented and kept on file at the licensed birth center.

87 Acts, ch 200, §13 HF 328
NEW section

135G.14 Postpartum care for birth center clients and infants.

1. A mother and her infant shall be dismissed from the licensed birth center within twenty-four hours after the birth of the infant except in unusual circumstances as defined by administrative rule. If a mother or infant is retained at the birth center for more than twenty-four hours after the birth, a report shall be filed with the department within forty-eight hours of the birth describing the circumstances and the reasons for the decision.

2. A prophylactic shall be instilled in the eyes of each newborn in accordance with section 140.13.

3. Postpartum evaluation and follow-up care shall be provided, which shall include:

- a. Physical examination of the infant.
- b. Metabolic screening tests required by statute or administrative rule.
- c. Referral to sources for pediatric care.
- d. Maternal postpartum assessment.
- e. Instruction in child care, including immunization.
- f. Family planning services.
- g. Referral to a licensed hospital.

87 Acts, ch 200, §14 HF 328
NEW section

135G.15 Clinical records.

1. Clinical records shall contain information prescribed by rule, including, but not limited to:

- a. Identifying information.
- b. Risk assessments.
- c. Information relating to prenatal visits.
- d. Information relating to course of labor and intrapartum care.
- e. Information relating to consultation, referral, and transport to a hospital.
- f. Newborn assessment, apgar score, treatments as required, and follow-up.
- g. Postpartum follow-up.

2. Clinical records shall be immediately available at the birth center:

- a. At the time of admission.
- b. When transfer of care is necessary.
- c. For audit by licensure personnel.
3. a. Clinical records shall be kept confidential in accordance with chapter 22.
- b. A client's clinical records are considered confidential documents and shall

be open to inspection only under the following conditions:

- (1) If a consent to release information has been signed by the client; or
- (2) The review is made by the department for a licensure survey or complaint investigation.

4. a. Clinical records shall be audited periodically, but no less frequently than every three months, to evaluate the process and outcome of care.

b. Statistics on maternal and perinatal morbidity and mortality, maternal risk, consultant referrals, and transfers of care shall be analyzed at least semiannually.

c. The governing body shall examine the results of the record audits and statistical analyses and shall make such reports available for inspection by the public and licensing authorities.

87 Acts, ch 200, §15 HF 328
NEW section

135G.16 Inspections and investigations —inspection fees.

1. The department shall make or cause to be made such inspections and investigations as the department deems necessary.

2. Each licensed birth center shall pay to the department, at the time of inspection, an inspection fee established by administrative rule, in an amount to cover the cost of the inspection. The fees collected shall be deposited into the general fund of the state.

3. The department shall coordinate all periodic inspections for licensure made by the department to ensure that the cost to the birth center of such inspections and the disruption of services by such inspections is minimized.

87 Acts, ch 200, §16 HF 328
NEW section

135G.17 Inspection reports.

1. Each licensed birth center shall maintain as public information, available upon request, records of all inspection reports pertaining to that birth center which have been filed with, or issued by, any governmental agency. Copies of such reports shall be retained in the records of the birth center for no less than five years from the date the reports are filed and issued.

2. Any record, report, or document which, by state or federal law or regulation, is deemed confidential shall not be distributed or made available for purposes of compliance with this section unless or until such confidential status expires, except as pursuant to section 135G.15.

3. A licensed birth center shall, upon the request of any person who has completed a written application with intent to be admitted to such birth center or any person who is a patient of such birth center, or any relative, spouse, or guardian of any such person, furnish to the requestor a copy of the last inspection report issued by the department or an accrediting organization, whichever is most recent, pertaining to the licensed birth center, as provided in subsection 1, provided the person requesting such report agrees to pay a reasonable charge to cover copying costs.

87 Acts, ch 200, §17 HF 328
NEW section

135G.18 Birth and death records—reports.

1. A completed certificate of birth shall be filed pursuant to section 144.13, and the registration fee pursuant to section 144.13A shall be charged and remitted.

2. Each newborn death and stillbirth shall be reported pursuant to section 144.29.

3. The licensee shall comply with all requirements of this chapter and administrative rules.

4. A report shall be submitted annually to the department by the licensee. The contents of the report shall be prescribed by administrative rule.

87 Acts, ch 200, §18 HF 328
NEW section

135G.19 Administrative penalties—emergency orders—moratorium on admissions.

1. *a.* The department may deny, revoke, or suspend a license, or impose an administrative fine not to exceed five hundred dollars per violation per day, for the violation of this chapter or any administrative rule. Each day of violation constitutes a separate violation and is subject to a separate fine.

b. In determining the amount of the fine to be levied for a violation, as provided in paragraph "a", the following factors shall be considered:

(1) The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of this chapter and administrative rules were violated.

(2) Actions taken by the licensee to correct the violations or to remedy complaints.

(3) Any previous violations by the licensee.

c. All amounts collected pursuant to this section shall be deposited into the general fund of the state.

2. The department may issue an emergency order immediately suspending or revoking a license when the department determines that any condition in the licensed birth center presents a clear and present danger to the public health and safety.

3. The department may impose an immediate moratorium on elective admissions to any licensed birth center, building or portion thereof, or service when the department determines that any condition in the birth center presents a threat to the public health or safety.

87 Acts, ch 200, §19 HF 328
NEW section

135G.20 Injunctive relief.

Notwithstanding the existence or pursuit of any other remedy, the department may maintain an action in the name of the state for injunction or other process to enforce this chapter and administrative rules.

87 Acts, ch 200, §20 HF 328
NEW section

135G.21 Establishing, managing, or operating a birth center without a license—penalty.

Any person who establishes, conducts, manages, or operates any birth center without a license is guilty of a simple misdemeanor. Each week of continuing violation after conviction shall be considered a separate offense.

87 Acts, ch 200, §21 HF 328
NEW section

CHAPTER 137

LOCAL BOARDS OF HEALTH

137.6 Powers of local boards.

Local boards shall have the following powers:

1. Enforce state health laws and the rules and lawful orders of the state department.

2. Make and enforce such reasonable rules and regulations not inconsistent with law or with the rules of the state board as may be necessary for the protection and improvement of the public health.

a. Rules of a county board shall become effective upon approval by the county board of supervisors and publication in a newspaper having general circulation in the county.

b. Rules of a city board shall become effective upon approval by the city council and publication in a newspaper having general circulation in the city.

c. Rules of a district board shall become effective upon approval by the district board and publication in a newspaper having general circulation in the district.

d. However, before approving any rule or regulation the local board of health shall hold a public hearing on the proposed rule. Any citizen may appear and be heard at the public hearing. A notice of the public hearing, stating the time and place and the general nature of the proposed rule or regulation, shall be published as provided in section 331.305 in the area served by the board.

The board shall also make a reasonable effort to give notice of the hearing to the communications media located within said area.

3. May by agreement with the council of any city within its jurisdiction enforce appropriate ordinances of said city.

4. Employ persons as necessary for the efficient discharge of its duties. Employment practices shall meet the requirements of the personnel commission or any civil service provision adopted under chapter 400.

5. Provide reports of its operations and activities to the state department as may be required by the director.

87 Acts, ch 43, §4 SF 265

See Code editor's note

Subsection 2, paragraph d, unnumbered paragraph 1 amended

CHAPTER 139

COMMUNICABLE AND REPORTABLE DISEASES AND POISONINGS

139.34 Reserved.

139.35 Reportable poisonings and illnesses.

1. If the results of an examination by a public, private, or hospital clinical laboratory of a specimen from a person in Iowa yield evidence of or are reactive for a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, the results shall be reported to the Iowa department of public health on forms prescribed by the department. If the laboratory is located in Iowa, the person in charge of the laboratory shall report the results. If the laboratory is not in Iowa, the health care provider submitting the specimen shall report the results.

2. The physician or other health practitioner attending a person infected with a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, shall immediately report the case to the Iowa department of public health. The Iowa department of public health shall publish and distribute instructions concerning the method of reporting. Reports shall be made in accordance with rules adopted by the Iowa department of public health.

3. A person in charge of a poison control or poison information center shall report cases of reportable poisoning, including methemoglobinemia, about which they receive inquiries to the Iowa department of public health.

4. The Iowa department of public health shall adopt rules designating reportable poisonings, including methemoglobinemia, and illnesses which must be reported under this section.

5. The Iowa department of public health shall establish and maintain a central registry to collect and store data reported pursuant to this section.

87 Acts, ch 225, §203 HF 631

NEW section

139.36 through 139.40 Reserved.

139.41 Acquired immune deficiency syndrome—confidential screening and testing.

The Iowa department of public health shall provide confidential screening and confirmatory testing at the request of persons at high risk of contracting acquired immune deficiency syndrome. For the purposes of this section, "*persons at high risk*" means homosexuals, bisexuals, and intravenous drug users. The screening and testing procedures may be provided by contract with alternate screening sites, private physicians, or a clinical laboratory for the purpose of providing these services.

A person seeking and undergoing acquired immune deficiency syndrome screening and testing procedures shall not be reported or have the person's identity revealed in any way without the express written consent of the person. The department shall provide instruction to personnel providing the screening and testing regarding proper procedure, including but not limited to prescreening

and pretesting counseling techniques. The department shall, in association with qualified counselors from public and private agencies, facilitate posttest counseling of a person with positive or negative test results, and for diagnosed acquired immune deficiency syndrome cases. The department shall also promote public education efforts regarding acquired immune deficiency syndrome and shall publicize the services and confidential nature of the services provided in order to encourage persons at risk of contracting acquired immune deficiency syndrome to undergo screening and testing procedures.

87 Acts, ch 216, §2 HF 310
NEW section

139.42 Acquired immune deficiency syndrome—central registry.

The Iowa department of public health shall establish and maintain a central registry of persons diagnosed as having contracted acquired immune deficiency syndrome in order to facilitate the provision of appropriate services to those persons. The department shall maintain the confidential nature of the information collected in a manner which prevents the identification of persons who are victims of acquired immune deficiency syndrome. Access to the registry shall be limited to departmental personnel having a need for such information in connection with their official duties.

87 Acts, ch 216, §1 HF 310
NEW section

CHAPTER 142B

ORGAN AND TISSUE TRANSPLANTS

142B.1 Transplant policy.

1. The department of human services and the Iowa department of public health shall create a thirteen-member commission to develop a written state plan for human organ and tissue transplants in this state and to make recommendations to the general assembly regarding appropriate legislation.

The membership of the commission shall include one member from each of the following organizations or industries, who shall be appointed from names submitted by the insurance industry, health policy corporation of Iowa, Iowa medical society, Iowa osteopathic medical association, and the Iowa nurses association. The Iowa hospital association shall submit the names of three representatives from separate, designated transplant centers. The Iowa department of public health and the department of human services shall jointly appoint a representative from one voluntary nonprofit organization interested in organ transplant procedures and one from the bureau of medical services of the department of human services, and three consumer representatives. The consumer representatives may receive actual expenses incurred as commission members, from funds appropriated to the department of human services.

2. The state plan shall consider policies and procedures for organ and tissue procurement, registration, and distribution, and the distribution plan shall guarantee equal access and availability to donor organs by each center; organ recipient selection criteria; transplant center designation and eligibility; and informed consent and confidentiality. The plan shall also address protocol to be adopted by each licensed hospital for identifying medically suitable organ and tissue donors, for designating and training persons within the hospital to make organ and tissue donor requests, for notifying organ and tissue procurement organizations of donations, and for cooperating in the procurement of the organ and tissue. The plan shall recognize the need for protocol which meets the special circumstances of different hospitals throughout the state and encourages reason-

able discretion and sensitivity to family circumstances in all discussions regarding donations of organs and tissues.

3. The state plan shall designate those transplant procedures eligible for reimbursement under Title XIX. It is the policy of this state that Title XIX reimbursement shall be limited to nonexperimental human organ and tissue transplantation procedures and services as provided under Title XVIII of the federal Social Security Act. For the purposes of this section, "*nonexperimental human organ and tissue transplantation procedures and services*" shall be those so designated by Title XVIII of the federal Social Security Act, and heart transplants and services for patients so long as patient selection policies of the center satisfactorily address the elements of the most recent patient selection guidelines adopted by Title XVIII.

The commission shall adopt the state plan by January 1, 1988, at which time the department of human services shall adopt administrative rules pursuant to chapter 17A to implement the state plan. The Iowa department of public health shall adopt rules addressing organ donor protocols for hospitals. Until such time as such rules are adopted, the department of human services shall adopt emergency rules for reimbursements of transplant services under Title XIX for those procedures defined as nonexperimental under Title XVIII of the federal Social Security Act. For the purposes of this section, "*nonexperimental human organ and tissue transplantation procedure and services*" shall be those so designated by Title XVIII of the federal Social Security Act, and heart transplants and services for patients so long as patient selection policies of the center satisfactorily address the elements of the most recent patient selection guidelines adopted by Title XVIII.

4. Notwithstanding subsection 2, if federal requirements have the effect of denying equal access to centers, the commission shall modify its plan, and the department of human services shall adopt rules, consistent with the federal requirements.

87 Acts, ch 234, §107 HF 671
NEW section

CHAPTER 144

VITAL STATISTICS

144.13A Registration fee.

The local registrar and state registrar shall charge the parent a ten dollar fee for the registration of a certificate of birth. If the person responsible for the filing of the certificate of birth under section 144.13 is not the parent, the person shall collect the fee from the parent. The fee shall be remitted to the appropriate registrar. If the expenses of the birth are reimbursed under the medical assistance program established by chapter 249A or paid for under the statewide indigent patient care program established by chapter 255, or paid for under the obstetrical and newborn indigent patient care program established by chapter 255A, or if the parent is indigent and unable to pay the expenses of the birth and no other means of payment is available to the parent, the registration fee is waived. If the person responsible for the filing of the certificate is not the parent, the person is discharged from the duty to collect and remit the fee under this section if the person has made a good faith effort to collect the fee from the parent. The fees collected by the local registrar and state registrar shall be remitted to the treasurer of state for deposit in the general fund of the state. It is the intent of the

general assembly that the funds generated from the registration fees be appropriated and used for primary and secondary child abuse prevention programs.

87 Acts, ch 233, §428 SF 511
Section amended

CHAPTER 144A

LIFE-SUSTAINING PROCEDURES ACT

144A.7 Procedure in absence of declaration.

1. Life-sustaining procedures may be withheld or withdrawn from a patient who is in a terminal condition and who is comatose, incompetent, or otherwise physically or mentally incapable of communication and has not made a declaration in accordance with this chapter if there is consultation and written agreement for the withholding or the withdrawal of life-sustaining procedures between the attending physician and any of the following individuals, who shall be guided by the express or implied intentions of the patient, in the following order of priority if no individual in a prior class is reasonably available, willing, and competent to act:

a. The attorney in fact designated to make treatment decisions for the patient should such person be diagnosed as suffering from a terminal condition, if the designation is in writing and complies with section 633.705.

b. The guardian of the person of the patient if one has been appointed, provided court approval is obtained in accordance with section 633.635, subsection 2, paragraph "c". This paragraph does not require the appointment of a guardian in order for a treatment decision to be made under this section.

c. The patient's spouse.

d. An adult child of the patient or, if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation.

e. A parent of the patient, or parents if both are reasonably available.

f. An adult sibling.

2. When a decision is made pursuant to this section to withhold or withdraw life-sustaining procedures, there shall be a witness present at the time of the consultation when that decision is made.

3. Subsections 1 and 2 shall not be in effect for a patient who is known to the attending physician to be pregnant with a fetus that could develop to the point of live birth with continued application of life-sustaining procedures. However, the provisions of this subsection do not impair any existing rights or responsibilities that any person may have in regard to the withholding or withdrawal of life-sustaining procedures.

87 Acts, ch 100, §1 HF 360
Subsection 1, paragraph b amended

CHAPTER 145

HEALTH DATA COMMISSION

145.7 Transplants.

The commission shall require that the director of public health and the commissioner of human services gather data from appropriate sources regarding

human organ and tissue transplant needs and occurrences in the state to assist in ongoing development and review of organ transplant policy.

87 Acts, ch 234, §108 HF 671
NEW section

CHAPTER 147

GENERAL PROVISIONS REGULATING PRACTICE PROFESSIONS

147.1 Definitions.

For the purpose of this and the following chapters of this title:

1. "*Examining board*" shall mean one of the boards appointed by the governor to give examinations to applicants for licenses.

2. "*Licensed*" or "*certified*" when applied to a physician and surgeon, podiatrist, osteopath, osteopathic physician and surgeon, psychologist or associate psychologist, chiropractor, nurse, dentist, dental hygienist, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, occupational therapist, practitioner of cosmetology, practitioner of barbering, funeral director, dietitian, or social worker means a person licensed under this title.

3. "*Profession*" means medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, cosmetology, barbering, mortuary science, social work or dietetics.

4. "*Department*" shall mean the Iowa department of public health.

5. "*Peer review*" means evaluation of professional services rendered by a person licensed to practice a profession.

6. "*Peer review committee*" means one or more persons acting in a peer review capacity who also serve as an officer, director, trustee, agent, or member of any of the following:

a. A state or local professional society of a profession for which there is peer review.

b. Any organization approved to conduct peer review by a society as designated in paragraph "a" of this subsection.

c. The medical staff of any licensed hospital.

d. An examining board.

e. The board of trustees of a licensed hospital when performing a function relating to the reporting required by section 147.135, subsection 3.

7. "*Basic emergency medical care provider*" means a first responder, emergency rescue technician, or emergency medical technician-ambulance as defined in section 147.1, subsection 9, 10 and 11.

8. "*Advanced emergency medical care provider*" means an advanced emergency medical technician or paramedic as defined in section 147A.1, subsections 4 and 5.

9. "*First responder*" means an individual trained in patient-stabilizing techniques, through the use of initial basic emergency medical care procedures and skills prior to the arrival of an ambulance or rescue squad, pursuant to rules established by the department, and who is currently certified by the department.

10. "*Emergency rescue technician*" means an individual trained in various rescue techniques including rescue from heights and depths, extrication from automobiles, agricultural rescue, and rescue from water and special hazards, pursuant to rules established by the department, and who is currently certified as an emergency rescue technician by the department.

11. "*Emergency medical technician-ambulance*" means an individual trained in patient assessment, the recognition of signs and symptoms regarding illness or injury, and the use of proper procedures when rendering basic emergency medical

care, pursuant to rules established by the department, and who is currently certified as an emergency medical technician-ambulance by the department.

87 Acts, ch 91, §6 HF 615
NEW subsections 7-11

147.74 Professional titles or abbreviations—false use prohibited.

Any person who falsely claims by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which the person holds a license or who fails to use the following designations shall be guilty of a simple misdemeanor.

A physician or surgeon may precede the person's name with the title "Doctor", and shall add after the name the letters, "M. D."

An osteopath or osteopathic physician and surgeon may use the prefix "Doctor", but shall add after the person's name the letters, "D. O." or "O. S." as the case may be, or the words, "Osteopath" or "Osteopathic Physician and Surgeon".

A chiropractor may use the prefix "Doctor", but shall add after the person's name the letters, "D. C." or the word, "Chiropractor".

A dentist may use the prefix "Doctor", but shall add after the person's name the letters "D. D. S." or the word "Dentist" or "Dental Surgeon".

A podiatrist may use the prefix "Dr." but shall add after the person's name the word "Podiatrist".

Any graduate of a school accredited on the board of optometric examiners may use the prefix "Doctor", but shall add after the person's name the letters "Opt." or "Optometrist".

A physical therapist shall be entitled to use the words "licensed physical therapist" after the person's name or to signify the same by the use of the letters "L. P. T." after the person's name.

A psychologist who possesses a doctoral degree and who claims to be a certified practicing psychologist may use the prefix "Doctor" but shall add after the person's name the word "Psychologist".

A speech pathologist or audiologist with a doctoral degree may use the suffix "Ph.D.", or the prefix "Doctor" or "Dr." and add after the person's name the words "Speech Pathologist" or "Audiologist".

A social worker licensed under chapter 154C and this chapter may use the words "licensed social worker" after the person's name or signify the same by the use of the letters "L. S. W." after the person's name.

No other practitioner licensed to practice a profession under any of the provisions of this title shall be entitled to use the prefix "Dr." or "Doctor".

A pharmacist who possesses a doctoral degree recognized by the American council of pharmaceutical education from a college of pharmacy approved by the board of pharmacy examiners or a doctor of philosophy degree in an area related

to pharmacy may use the prefix "Doctor" or "Dr." but shall add after the person's name the word "Pharmacist" or "Pharm. D."

87 Acts, ch 215, §40 HF 594
NEW unnumbered paragraph at end of section

147.157 through 147.160 Reserved.

147.161 Training and certification of first responders, emergency rescue technicians, and emergency medical technicians-ambulance.

The department shall establish rules pursuant to this chapter for the training and certification of first responders, emergency rescue technicians, and emergency medical technicians-ambulance as defined under section 147.1.

87 Acts, ch 91, §7 HF 615
NEW section

CHAPTER 148

PRACTICE OF MEDICINE AND SURGERY

148.10 Temporary certificate.

The medical examiners may, in their discretion, issue a temporary certificate authorizing the licensee to practice medicine and surgery or osteopathic medicine and surgery in a specific location or locations and for a specified period of time if, in the opinion of the medical examiners, a need exists and the person possesses the qualifications prescribed by the medical examiners for the license, which shall be substantially equivalent to those required for licensure under this chapter or chapter 150A, as the case may be. The medical examiners shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure are mandatory for this temporary license except as specifically designated by the medical examiners. The granting of a temporary license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure, nor are the medical examiners in any way obligated to so license the person.

The temporary certificate shall be issued for a period not to exceed one year and may be renewed, but a person shall not practice medicine and surgery or osteopathic medicine and surgery in excess of three years while holding a temporary certificate. The fee for this license and the fee for renewal of this license shall be set by the medical examiners. The fees shall be based on the administrative costs of issuing and renewing the licenses. The medical examiners may cancel a temporary certificate at any time, without a hearing, for reasons deemed sufficient to the medical examiners.

When the medical examiners cancel a temporary certificate they shall promptly notify the licensee by registered United States mail, at the licensee's last-named address, as reflected by the files of the medical examiners, and the temporary certificate is terminated and of no further force and effect three days after the giving of the notice to the licensee.

87 Acts, ch 128, §1 HF 346
Section amended

CHAPTER 148A

PHYSICAL THERAPISTS

148A.1 Definition.

As used in this chapter, physical therapy is that branch of science that deals with the evaluation and treatment of human capabilities and impairments.

Physical therapy uses the effective properties of physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound, and therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment. Physical therapy includes the interpretation of performances, tests, and measurements, the establishment and modification of physical therapy programs, treatment planning, consultative services, instructions to the patients, and the administration and supervision attendant to physical therapy facilities. Physical therapy evaluation of biomechanics may be rendered by a physical therapist without a prescription or referral from a physician or dentist. Physical therapy treatment shall be rendered by a physical therapist only under prescription or referral from a physician, podiatrist, or dentist, or referral from a chiropractor.

87 Acts, ch 65, §3 SF 267
Section affirmed and reenacted effective April 29, 1987; legislative findings; 87 Acts, ch 65, §1, 3 SF 267

CHAPTER 149

PRACTICE OF PODIATRY

149.7 Temporary certificate.

The podiatry examiners may issue a temporary certificate authorizing the licensee named in the certificate to practice podiatry if, in the opinion of the podiatry examiners, a need exists and the person possesses the qualifications prescribed by the podiatry examiners for the certificate, which shall be substantially equivalent to those required for regular licensure under this chapter. The podiatry examiners shall determine in each instance the applicant's eligibility for the certificate, whether or not an examination shall be given, and the type of examination. The requirements of the law pertaining to regular permanent licensure shall not be mandatory for this temporary certificate except as specifically designated by the podiatry examiners. The granting of a temporary certificate does not in any way indicate that the person licensed is necessarily eligible for regular licensure, and the podiatry examiners are not obligated to license the person.

The temporary certificate shall be issued for one year and may be renewed, but a person shall not be entitled to practice podiatry in excess of three years while holding a temporary certificate. The fee for this certificate shall be set by the podiatry examiners and if extended beyond one year a renewal fee per year shall be set by the podiatry examiners. The fees shall be based on the administrative costs of issuing and renewing the certificates. The podiatry examiners may cancel a temporary certificate at any time, without a hearing, for reasons deemed sufficient to the podiatry examiners.

When the podiatry examiners cancel a temporary certificate, they shall promptly notify the licensee by registered United States mail, at the licensee's last-named address, which is reflected in the files of the podiatry examiners, and the temporary certificate shall become terminated and of no further force and effect three days after the giving of the notice to the licensee.

A temporary certificate issued under this section to an academic staff member of a podiatry school in this state shall automatically expire when the special licensee terminates affiliation with the school.

87 Acts, ch 128, §2 HF 346
Unnumbered paragraph 1 amended

CHAPTER 152

PRACTICE OF NURSING

152.1 Definitions.

As used in this chapter:

1. The "*practice of nursing*" means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery, as defined in chapter 148, the osteopathic practice, as defined in chapter 150, the practice of osteopathic medicine and surgery, as defined in chapter 150A, or the practice of pharmacy as defined in chapter 155A, except practices which are recognized by the medical and nursing professions and approved by the board as proper to be performed by a registered nurse.

b. The performance of nursing services by a student enrolled in an approved program of nursing if the performance is incidental to a course of study under this program.

c. The performance of services by employed workers in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatrist, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer's license.

d. The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

e. The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

2. The "*practice of the profession of a registered nurse*" means the practice of a natural person who is licensed by the board to do all of the following:

a. Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

b. Execute regimen prescribed by a physician.

c. Supervise and teach other personnel in the performance of activities relating to nursing care.

d. Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

e. Apply to the abilities enumerated in paragraph "a" through "d" of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

3. The "*practice of a licensed practical nurse*" means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

4. As used in this section, "*nursing diagnosis*" means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

5. "*Board*" means the board of nursing, created under chapter 147.

6. "Physician" means a person licensed in this state to practice medicine and surgery, osteopathy and surgery, or osteopathy, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license.

87 Acts, ch 215, §41 HF 594
Subsection 1, paragraph a amended

CHAPTER 154

OPTOMETRY

154.1 Optometry—certified licensed optometrists—therapeutically certified optometrists.

For the purpose of this title the following classes of persons shall be deemed to be engaged in the practice of optometry:

1. Persons employing any means other than the use of drugs, medicine or surgery for the measurement of the visual power and visual efficiency of the human eye; the prescribing and adapting of lenses, prisms and contact lenses, and the using or employing of visual training or ocular exercise, for the aid, relief or correction of vision.

2. Persons who allow the public to use any mechanical device for such purpose.

3. Persons who publicly profess to be optometrists and to assume the duties incident to said profession.

Certified licensed optometrists may employ cycloplegics, mydriatics and topical anesthetics as diagnostic agents topically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under chapter 148 or 150A. A certified licensed optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use diagnostic agents. A certified licensed optometrist shall be provided with a distinctive certificate by the board which shall be displayed for viewing by the patients of the optometrist.

Therapeutically certified optometrists may employ the following pharmaceuticals; topical and oral antimicrobial agents, topical and oral antihistamines, topical and oral antiglaucoma agents, topical anti-inflammatory agents, topical and oral analgesic agents and topical anesthetic agents and notwithstanding section 147.107, may without charge supply any of the above listed pharmaceuticals to commence a course of therapy. Superficial foreign bodies may be removed from the human eye and adnexa. These therapeutic efforts are intended for the purpose of examination, diagnosis, and treatment of visual defects, abnormal conditions and diseases of the human eye and adnexa, for proper optometric practice or referral for consultation or treatment to persons licensed under chapter 148 or 150A. A therapeutically certified optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use the agents and procedures listed above. A therapeutically certified optometrist shall be provided with a distinctive certificate by the board which shall be displayed for viewing by the patients of the optometrist.

87 Acts, ch 119, §1 SF 216
Unnumbered paragraph 3 amended

154.3 License.

1. Every applicant for a license to practice optometry shall:

a. Present satisfactory evidence of a preliminary education equivalent to at least four years study in an accredited high school or other secondary school.

b. Present a diploma from an accredited school of optometry.

c. Pass an examination prescribed by the optometry examiners in the subjects of physiology of the eye, optical physics, anatomy of the eye, ophthalmology, and practical optometry.

2. A person applying to be licensed as an optometrist after January 1, 1980, shall also apply to be a certified licensed optometrist and shall, in addition to satisfactorily completing all requirements for a license to practice optometry, satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology and receive clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye for the purpose of examination of the human eye, and the diagnosis of conditions of the human eye, at an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education.

3. A person licensed as an optometrist prior to January 1, 1980 who applies to be a certified licensed optometrist shall first satisfactorily complete a course consisting of at least one hundred contact hours in pharmacology as it applies to optometry including clinical training as it applies to optometry with particular emphasis on the topical application of diagnostic agents to the human eye and possible adverse reactions thereto, for the purpose of examination of the human eye and the diagnosis of conditions of the human eye, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States office of education, and approved by the board of optometry examiners.

4. In addition to the examination required by subsection 1, paragraph "c", a person applying to be a certified licensed optometrist shall also pass an examination prescribed by the optometry examiners in the subjects of physiology and pathology appropriate to the use of diagnostic pharmaceutical agents and diagnosis of conditions of the human eye, and pharmacology including systemic effects of ophthalmic diagnostic pharmaceutical agents and the possible adverse reactions thereto, authorized for use by optometrists by section 154.1.

5. A person applying to be licensed as an optometrist after January 1, 1986, shall also apply to be a therapeutically certified optometrist and shall, in addition to satisfactorily completing all requirements for a license to practice optometry, satisfactorily complete a course as defined by rule of the state board of optometry examiners with particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. The rule of the board shall require a course including a minimum of forty hours of didactic education and sixty hours of approved supervised clinical training in the examination, diagnosis and treatment of conditions of the human eye and adnexa. The board may also, by rule, provide a procedure by which an applicant who has received didactic education meeting the requirements of rules adopted pursuant to this subsection at an approved school of optometry may apply to the board for a waiver of the didactic education requirements of this subsection.

6. A person licensed in any state as an optometrist prior to January 1, 1986, who applies to be a therapeutically certified optometrist shall first satisfactorily complete a course as defined by rule of the board of optometry examiners with particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. The rule of the board shall require a course including a minimum of forty hours of didactic education and

sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa. Effective July 1, 1987, the board shall require that therapeutically certified optometrists prior to the utilization of topical and oral antiglaucoma agents, oral antimicrobial agents and oral analgesic agents shall complete an additional forty-four hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States office of education, and approved by the board of optometry examiners. Upon completion of the additional forty-four hours of education, a therapeutically certified optometrist shall also pass an oral or written examination prescribed by the board. The board shall suspend the optometrist's therapeutic certificate for failure to comply with this subsection by July 1, 1988.

The board shall adopt rules requiring an additional twenty hours per biennium of continuing education in the treatment and management of ocular disease for all therapeutically certified optometrists. The department of ophthalmology of the school of medicine of the State University of Iowa shall be one of the providers of this continuing education.

7. A person licensed in any state as an optometrist prior to January 1, 1986, who applies to be a therapeutically certified optometrist shall also be required to qualify as a certified licensed optometrist as defined in subsections 2, 3, and 4.

8. In addition to the examination required by subsection 1, paragraph "c", a person applying to be a therapeutically certified optometrist shall also pass an examination prescribed by the board of optometry examiners in the examination, diagnosis, and treatment of diseases of the human eye and adnexa.

87 Acts, ch 119, §2 SF 216
Subsection 6 amended

CHAPTER 155

PHARMACISTS, WHOLESALE DRUGGISTS, AND PRESCRIPTION DRUGS

Repealed by 87 Acts, ch 215, §49; HF 594 see chapter 155A
See Code editor's note

CHAPTER 155A

PHARMACY PRACTICE ACT

Enforcement, §147.87, 147.90, 147.92, 147.99
Examining board, support staff exception;
location and powers; see §135.11A, 135.31

155A.1 Short title.

This chapter may be cited as the "*Iowa Pharmacy Practice Act*."

87 Acts, ch 215, §1 HF 594
NEW section

155A.2 Legislative declaration— purpose.

1. It is the purpose of this chapter to promote, preserve, and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices or other classes of drugs or devices which may be authorized.

2. Practitioners licensed under a separate chapter of the Code are not regulated by this chapter except when engaged in the operation of a pharmacy for the retailing of prescription drugs.

87 Acts, ch 215, §2 HF 594
NEW section

155A.3 Definitions.

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

1. "*Administer*" means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by one of the following:

- a. A practitioner or the practitioner's authorized agent.
- b. The patient or research subject at the direction of a practitioner.

2. "*Authorized agent*" means an individual designated by a practitioner who is under the supervision of the practitioner and for whom the practitioner assumes legal responsibility.

3. "*Board*" means the board of pharmacy examiners.

4. "*Brand name*" or "*trade name*" means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler, or distributor.

5. "*College of pharmacy*" means a school, university, or college of pharmacy that satisfies the accreditation standards of the American council on pharmaceutical education as adopted by the board, or that has degree requirements which meet the standards of accreditation adopted by the board.

6. "*Controlled substance*" means a drug substance, immediate precursor, or other substance listed in division II of chapter 204.

7. "*Controlled substances Act*" means chapter 204.

8. "*Deliver*" or "*delivery*" means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

9. "*Demonstrated bioavailability*" means the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the time-concentration curve of the drug or drug ingredient in the systemic circulation.

10. "*Device*" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

11. "*Dispense*" means to deliver a prescription drug or controlled substance to an ultimate user or research subject by or pursuant to the lawful prescription drug order or medication order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

12. "*Distribute*" means the delivery of a prescription drug or device.

13. "*Drug*" means one or more of the following:

a. A substance recognized as a drug in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium or any supplement to any of them.

b. A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

c. A substance, other than food, intended to affect the structure or any function of the body of humans or other animals.

d. A substance intended for use as a component of any substance specified in paragraph "a", "b", or "c".

e. A controlled substance.

14. "*Drug product selection*" means the act of selecting the source of supply of a drug product.

15. "*Generic name*" means the official title of a drug or drug ingredient published in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium published by the United States pharmacopoeial convention or any supplement to any of them.

16. "*Internship*" means a practical experience program approved by the board for persons training to become pharmacists.

17. "*Label*" means written, printed, or graphic matter on the immediate container of a drug or device.

18. "*Labeling*" means the process of preparing and affixing a label including information required by federal or state law or regulation to a drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device or unit dose packaging.

19. "*Medication order*" means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent for administration of a drug or device.

20. "*Pharmacist*" means a person licensed by the board to practice pharmacy.

21. "*Pharmacist in charge*" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority and responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

22. "*Pharmacist-intern*" means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board, or a graduate of a college of pharmacy, who is participating in a board-approved internship under the supervision of a preceptor.

23. "*Pharmacy*" means a location where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription drug orders are received or processed in accordance with the pharmacy laws.

24. "*Pharmacy license*" means a license issued to a pharmacy or other place where prescription drugs or devices are dispensed to the general public pursuant to a prescription drug order.

25. "*Practice of pharmacy*" is a dynamic patient-oriented health service profession that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and related drug therapy.

26. "*Practitioner*" means a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

27. "*Preceptor*" means a pharmacist in good standing licensed in this state to practice pharmacy and approved by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

28. "*Prescription drug*" means any of the following:

a. A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.

b. A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(1) Caution: Federal law prohibits dispensing without a prescription.

(2) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

c. A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

29. "Prescription drug order" means a written order from a practitioner or an oral order from a practitioner or the practitioner's authorized agent who communicates the practitioner's instructions, to a pharmacist for a prescription drug or device to be dispensed.

30. "Proprietary medicine" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

31. "Ultimate user" means a person who has lawfully obtained and possesses a prescription drug or device for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

32. "Unit dose packaging" means the packaging of individual doses of a drug in containers which preserve the identity and integrity of the drug from the point of packaging to administration and which are properly labeled pursuant to rules of the board.

33. "Wholesaler" means a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, or offered for sale at wholesale in this state. "Wholesaler" does not include those wholesalers who sell only proprietary medicines.

34. "Wholesale salesperson" or "manufacturer's representative" means an individual who takes purchase orders on behalf of a wholesaler for prescription drugs, medicinal chemicals, medicines, or poisons. "Wholesale salesperson" or "manufacturer's representative" does not include an individual who sells only proprietary medicines.

87 Acts, ch 215, §3 HF 594
NEW section

155A.4 Prohibition against unlicensed persons dispensing or distributing prescription drugs—exceptions.

1. A person shall not dispense prescription drugs unless that person is a licensed pharmacist or is authorized by section 147.107 to dispense or distribute prescription drugs.

2. Notwithstanding subsection 1, it is not unlawful for:

a. A manufacturer or wholesaler to distribute prescription drugs as provided by state or federal law.

b. A practitioner, licensed by the appropriate state board, to dispense prescription drugs to patients as incident to the practice of the profession, except with respect to the operation of a pharmacy for the retailing of prescription drugs.

c. A practitioner, licensed by the appropriate state board, to administer drugs to patients. This chapter does not prevent a practitioner from delegating the administration of a prescription drug to a nurse, intern, or other qualified individual or, in the case of a veterinarian, to an orderly or assistant, under the practitioner's direction and supervision.

d. A person to sell at retail a proprietary medicine, an insecticide, a fungicide, or a chemical used in the arts, if properly labeled.

e. A person to procure prescription drugs for lawful research, teaching, or testing and not for resale.

f. A pharmacy to distribute a prescription drug to another pharmacy or to a practitioner.

87 Acts, ch 215, §4 HF 594
NEW section

155A.5 Injunction.

Notwithstanding the existence or pursuit of any other remedy the board may, in the manner provided by law, maintain an action in the name of the state for

injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a pharmacy or wholesaler, without license, or to prevent the violation of provisions of this chapter. Upon request of the board, the attorney general shall institute the proper proceedings and the county attorney, at the request of the attorney general, shall appear and prosecute the action when brought in the county attorney's county.

87 Acts, ch 215, §5 HF 594
NEW section

155A.6 Internships—pharmacist-intern registration.

1. A program of pharmacist internships is established. Each internship is subject to approval by the board.

2. A person desiring to be a pharmacist-intern in this state shall apply to the board for registration. The application must be on a form prescribed by the board. A pharmacist-intern must be registered during internship training and thereafter pursuant to rules adopted by the board.

3. The board shall establish standards for registration and may deny, suspend, or revoke a pharmacist-intern registration for failure to meet the standards or for any violation of this chapter.

4. The board shall adopt rules in accordance with chapter 17A on matters pertaining to registration standards, registration fees, conditions of registration, termination of registration, and approval of preceptors.

87 Acts, ch 215, §6 HF 594
NEW section

155A.7 Pharmacist license.

A person shall not engage in the practice of pharmacy in this state without a license. The license shall be identified as a pharmacist license.

87 Acts, ch 215, §7 HF 594
NEW section

155A.8 Requirements for pharmacist license.

To qualify for a pharmacist license, an applicant shall meet the following requirements:

1. Be a graduate of a school or college of pharmacy or of a department of pharmacy of a university recognized and approved by the board.

2. File proof, satisfactory to the board, of internship for a period of time fixed by the board.

3. Pass an examination prescribed by the board.

87 Acts, ch 215, §8 HF 594
NEW section

155A.9 Approved colleges— graduates of foreign colleges.

1. A college of pharmacy shall not be approved by the board unless the college is accredited by the American council on pharmaceutical education.

2. An applicant who is a graduate of a school or college of pharmacy located outside the United States but who is otherwise qualified to apply for a pharmacist license in this state may be deemed to have satisfied the requirements of section 155A.8, subsection 1, by verification to the board of the applicant's academic record and graduation and by meeting other requirements established by rule of the board. The board may require the applicant to pass an examination or examinations given or approved by the board to establish proficiency in English

and equivalency of education as a prerequisite for taking the licensure examination required in section 155A.8, subsection 3.

87 Acts, ch 215, §9 HF 594
NEW section

155A.10 Display of pharmacist license.

A pharmacist shall publicly display the license to practice pharmacy and the license renewal certificate pursuant to rules adopted by the board.

87 Acts, ch 215, §10 HF 594
NEW section

155A.11 Renewal of pharmacist license.

The board shall specify by rule the procedures to be followed and the fee to be paid for a renewal certificate, and penalties for late renewal or failure to renew a pharmacist license.

87 Acts, ch 215, §11 HF 594
NEW section

155A.12 Pharmacist license— grounds for discipline.

The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.
2. Engaged in unethical conduct as that term is defined by rules of the board.
3. Violated any of the provisions for licensee discipline set forth in section 147.55.
4. Failed to keep and maintain records required by this chapter or failed to keep and maintain complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act.
5. Violated any provision of the controlled substances Act or rules relating to that Act.
6. Aided or abetted an unlicensed individual to engage in the practice of pharmacy.
7. Refused an entry into any pharmacy for any inspection authorized by this chapter.
8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.
9. Been convicted of an offense or subjected to a penalty or fine for violation of chapter 147, 203, 203A, 204, or the Federal Food, Drug and Cosmetic Act. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.
10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

87 Acts, ch 215, §12 HF 594
NEW section

155A.13 Pharmacy license.

1. A person shall not establish, conduct, or maintain a pharmacy in this state without a license. The license shall be identified as a pharmacy license. A pharmacy license issued pursuant to subsection 4 may be further identified as a hospital pharmacy license.

2. The board shall specify by rule the licensing procedures to be followed, including specifications of forms for use in applying for a pharmacy license and fees for filing an application.

3. The board may issue a special or limited-use pharmacy license based upon special conditions of use imposed pursuant to rules adopted by the board for cases in which the board determines that certain requirements may be waived.

4. The board shall adopt rules for the issuance of a hospital pharmacy license to a hospital which provides pharmacy services for its own use. The rules shall:

- a. Recognize the special needs and circumstances of hospital pharmacies.
- b. Give due consideration to the scope of pharmacy services that the hospital's medical staff and governing board elect to provide for the hospital's own use.
- c. Consider the size, location, personnel, and financial needs of the hospital.
- d. Give recognition to the standards of the joint commission on accreditation of hospitals and the American osteopathic association and to the conditions of participation under medicare.

To the maximum extent possible, the board shall coordinate the rules with the standards and conditions described in paragraph "d" and shall coordinate its inspections of hospital pharmacies with the medicare surveys of the department of inspections and appeals and with the board's inspections with respect to controlled substances conducted under contract with the federal government.

A hospital which provides pharmacy services by contracting with a licensed pharmacy is not required to obtain a hospital pharmacy license or a general pharmacy license.

5. A hospital which elects to operate a pharmacy for other than its own use is subject to the requirements for a general pharmacy license. If the hospital's pharmacy services for other than its own use are special or limited, the board may issue a special or limited-use pharmacy license pursuant to subsection 3.

6. To qualify for a pharmacy license, the applicant shall submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board that shall include the following information and be given under oath:

- a. Ownership.
- b. Location.
- c. The license number of each pharmacist employed by the pharmacy at the time of application.
- d. The trade or corporate name of the pharmacy.
- e. The name of the pharmacist in charge, who has the authority and responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

7. A person who falsely makes the affidavit prescribed in subsection 6 is subject to all penalties prescribed for making a false affidavit.

8. A pharmacy license issued by the board under this chapter shall be issued in the name of the pharmacist in charge and is not transferable or assignable.

9. The board shall specify by rule minimum standards for professional responsibility in the conduct of a pharmacy.

10. A separate license is required for each principal place of practice.

11. The license of the pharmacy shall be displayed.

87 Acts, ch 215, §13 HF 594

Requirement that hospital pharmacies be licensed takes effect January 1, 1988; 87 Acts, ch 215, §50 HF 594

NEW section

155A.14 Renewal of pharmacy license.

The board shall specify by rule the procedures to be followed and the fee to be paid for a renewal certificate, and the penalties for late renewal or failure to renew a pharmacy license.

87 Acts, ch 215, §14 HF 594

NEW section

155A.15 Pharmacies—license required—discipline, violations, and penalties.

1. A pharmacy subject to section 155A.13 shall not be operated until a license or renewal certificate has been issued to the pharmacy by the board.

2. The board shall refuse to issue a pharmacy license for failure to meet the requirements of section 155A.13. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

a. Been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude, under the law of this state, another state, or the United States.

b. Advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner.

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

d. Delivered without legal authorization prescription drugs or devices to a person other than one of the following:

(1) A pharmacy licensed by the board.

(2) A practitioner.

(3) A person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale.

(4) A manufacturer or wholesaler licensed by the board.

However, this chapter does not prohibit a pharmacy from furnishing a prescription drug or device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with regulations of the Iowa department of public health.

e. Allowed an employee who is not a licensed pharmacist to practice pharmacy.

f. Delivered mislabeled prescription or nonprescription drugs.

g. Failed to engage in or ceased to engage in the business described in the application for a license.

h. Failed to keep and maintain records as required by this chapter, the controlled substances Act, or rules adopted under the controlled substances Act.

i. Failed to establish effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this chapter and other Iowa or federal laws or rules.

87 Acts, ch 215, §15 HF 594
NEW section

155A.16 Procedure.

Unless otherwise provided, any disciplinary action taken by the board under section 155A.12 or 155A.15 is governed by chapter 17A and the rules of practice and procedure before the board.

87 Acts, ch 215, §16 HF 594
NEW section

155A.17 Wholesale drug license.

A person shall not establish, conduct or maintain a wholesale drug business as defined in this chapter without a license. The license shall be identified as a wholesale drug license. This section does not apply to a manufacturer's representative acting in the usual course of business or employment as a manufacturer's representative.

87 Acts, ch 215, §17 HF 594
NEW section

155A.18 Penalties.

The board shall impose penalties as allowed under section 258A.3. In addition, civil penalties not to exceed twenty-five thousand dollars, may be imposed.

87 Acts, ch 215, §18 HF 594
NEW section

155A.19 Notifications to board.

1. A pharmacy shall report in writing to the board, pursuant to its rules, the following:

- a. Permanent closing.
- b. Change of ownership.
- c. Change of location.
- d. Change of pharmacist in charge.
- e. The sale or transfer of prescription drugs, including controlled substances, on the permanent closing or change of ownership of the pharmacy.
- f. Out-of-state purchases of controlled substances.
- g. Theft or significant loss of any controlled substance on discovery of the theft or loss.

h. Disasters, accidents, and emergencies that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease.

2. A pharmacist shall report in writing to the board within ten days a change of address or place of employment.

87 Acts, ch 215, §19 HF 594
NEW section

155A.20 Unlawful use of terms and titles—impersonation.

1. A person shall not display in or on any store or place of business the word or words: "apothecary", "drug", "drug store", or "pharmacy", either in English or any other language, any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead the public unless it is a pharmacy or drug wholesaler licensed under this chapter.

2. A person shall not do any of the following:

- a. Impersonate before the board an applicant applying for licensing under this chapter.

- b. Impersonate an Iowa licensed pharmacist.

c. Use the title pharmacist, druggist, apothecary, or words of similar intent unless the person is licensed to practice pharmacy.

3. A pharmacist shall not utilize the title "Dr." or "Doctor" if that pharmacist has not acquired the doctor of pharmacy degree from an approved college of pharmacy or the doctor of philosophy degree in an area related to pharmacy.

87 Acts, ch 215, §20 HF 594
NEW section

155A.21 Unlawful possession of prescription drug—penalty.

1. A person found in possession of a drug limited to dispensation by prescription, unless the drug was so lawfully dispensed, commits a serious misdemeanor.

2. Subsection 1 does not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatrist, therapeutically certified optometrist, a nurse acting under the direction of a physician, or the board of pharmacy examiners, its officers, agents, inspectors, and representatives, nor to a common carrier, manufacturer's representative, or messenger when transporting the drug in the same unbroken package in which the drug was delivered to that person for transportation.

87 Acts, ch 215, §21 HF 594
NEW section

155A.22 General penalty.

A person who violates any of the provisions of this chapter or any chapter pertaining to or affecting the practice of pharmacy for which a specific penalty is not provided commits a simple misdemeanor.

87 Acts, ch 215, §22 HF 594
NEW section

155A.23 Prohibited acts.

A person shall not:

1. Obtain or attempt to obtain a prescription drug or procure or attempt to procure the administration of a prescription drug by:

- a. Fraud, deceit, misrepresentation, or subterfuge.
- b. Forgery or alteration of a prescription or of any written order.
- c. Concealment of a material fact.
- d. Use of a false name or the giving of a false address.

2. Willfully make a false statement in any prescription, report, or record required by this chapter.

3. For the purpose of obtaining a prescription drug, falsely assume the title of or claim to be a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, podiatrist, veterinarian, or other authorized person.

4. Make or utter any false or forged prescription or written order.

5. Affix any false or forged label to a package or receptacle containing prescription drugs.

Information communicated to a physician in an unlawful effort to procure a prescription drug or to procure the administration of a prescription drug shall not be deemed a privileged communication.

87 Acts, ch 215, §23 HF 594
NEW section

155A.24 Penalties.

A person who violates a provision of section 155A.23 or who sells or offers for sale, gives away, or administers to another person any prescription drug commits a public offense and shall be punished as follows:

If the prescription drug is a controlled substance, the person shall be punished pursuant to section 204.401, subsection 1, and section 204.411.

If the prescription drug is not a controlled substance, the person, upon conviction of a first offense, is guilty of a serious misdemeanor. For a second

offense, or if in case of a first offense the offender previously has been convicted of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender is guilty of an aggravated misdemeanor. For a third or subsequent offense or if in the case of a second offense the offender previously has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs, the offender is guilty of a class "D" felony.

A person who violates any provision of this chapter by selling, giving away, or administering any prescription drug to a minor is guilty of a class "C" felony.

This section does not prevent a licensed practitioner of medicine, dentistry, podiatry, nursing, veterinary medicine, or pharmacy from acts necessary in the ethical and legal performance of the practitioner's profession.

87 Acts, ch 215, §24 HF 594
NEW section

155A.25 Burden of proof.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this chapter, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

87 Acts, ch 215, §25 HF 594
NEW section

155A.26 Enforcement—agents as peace officers.

The board of pharmacy examiners, its officers, agents, inspectors, and representatives, and all peace officers within the state, and all county attorneys shall enforce all provisions of this chapter, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to prescription drugs. Officers, agents, inspectors, and representatives of the board of pharmacy examiners shall have the powers and status of peace officers when enforcing the provisions of this chapter.

87 Acts, ch 215, §26 HF 594
NEW section

155A.27 Requirements for prescription.

Each prescription drug order issued or filled in this state:

1. If written, shall contain:
 - a. The date of issue.
 - b. The name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.
 - c. The name, strength, and quantity of the drug, medicine, or device prescribed.
 - d. The directions for use of the drug, medicine, or device prescribed.
 - e. The name, address, and signature of the practitioner issuing the prescription.
 - f. The federal drug enforcement administration number, if required under chapter 204.

2. If oral, the practitioner issuing the prescription shall furnish the same information required for a written prescription, except for the written signature and address of the practitioner. Upon receipt of an oral prescription, the pharma-

cist shall promptly reduce the oral prescription to a written format by recording the information required in a written prescription.

87 Acts, ch 215, §27 HF 594
NEW section

155A.28 Label of prescription drugs.

The label of any drug or device sold and dispensed on the prescription of a practitioner shall be in compliance with rules adopted by the board.

87 Acts, ch 215, §28 HF 594
NEW section

155A.29 Prescription refills.

1. Except as specified in subsection 2, a prescription for any prescription drug or device which is not a controlled substance shall not be filled or refilled more than eighteen months after the date on which the prescription was issued and a prescription which is authorized to be refilled shall not be refilled more than eleven times.

2. A pharmacist may exercise professional judgment by refilling a prescription without prescriber authorization if all of the following are true:

- a. The pharmacist is unable to contact the prescriber after reasonable effort.
- b. Failure to refill the prescription might result in an interruption of therapeutic regimen or create patient suffering.
- c. The pharmacist informs the patient or the patient's representative at the time of dispensing, and the practitioner at the earliest convenience that prescriber reauthorization is required.

3. Prescriptions may be refilled once pursuant to subsection 2 for a period of time reasonably necessary for the pharmacist to secure prescriber authorization.

87 Acts, ch 215, §29 HF 594
NEW section

155A.30 Out-of-state prescription orders.

Prescription drug orders issued by out-of-state practitioners who would be authorized to prescribe if they were practicing in Iowa may be filled by licensed pharmacists operating in licensed Iowa pharmacies.

87 Acts, ch 215, §30 HF 594
NEW section

155A.31 Reference library.

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

87 Acts, ch 215, §31 HF 594
NEW section

155A.32 Drug product selection— restrictions.

1. If an authorized prescriber prescribes, either in writing or orally, a drug by its brand or trade name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale to the patient. If the cost of the prescription or any part of it will be paid by expenditure of public funds authorized under chapter 249A, the pharmacist shall exercise professional judgment by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale. If the pharmacist exercises drug product selection, the pharmacist shall inform the patient of the savings which the patient will obtain as a result of the drug product selection and pass on to the patient no less than fifty percent of the difference in actual acquisition costs between the drug prescribed and the drug substituted.

2. The pharmacist shall not exercise the drug product selection described in this section if either of the following is true:

a. The prescriber specifically indicates that no drug product selection shall be made.

b. The person presenting the prescription indicates that only the specific drug product prescribed should be dispensed. However, this paragraph does not apply if the cost of the prescription or any part of it will be paid by expenditure of public funds authorized under chapter 249A.

3. If selection of a generically equivalent product is made under this section, the pharmacist making the selection shall note that fact and the name of the manufacturer of the selected drug on the prescription presented by the patient or the patient's adult representative.

87 Acts, ch 215, §32 HF 594

Amendments to similar section by 87 Acts, ch 119, §7, and 87 Acts, ch 233, §429, superseded; see Code editor's note at ch 155
NEW section

155A.33 Delegation of nonjudgmental functions.

A pharmacist may delegate nonjudgmental dispensing functions to assistants, but only if the pharmacist is physically present to verify the accuracy and completeness of the patient's prescription prior to delivery to the patient or the patient's representative.

87 Acts, ch 215, §33 HF 594

NEW section

155A.34 Transfer of prescriptions.

A pharmacist may transfer a valid prescription order to another pharmacist pursuant to rules adopted by the board.

87 Acts, ch 215, §34 HF 594

NEW section

155A.35 Patient medication records.

A licensed pharmacy shall maintain patient medication records in accordance with rules adopted by the board.

87 Acts, ch 215, §35 HF 594

NEW section

155A.36 Medication delivery systems.

Drugs dispensed utilizing unit dose packaging shall comply with labeling and packaging requirements in accordance with rules adopted by the board.

87 Acts, ch 215, §36 HF 594

NEW section

155A.37 Code of professional responsibility for board employees.

1. The board shall adopt a code of professional responsibility to regulate the conduct of board employees responsible for inspections and surveys of pharmacies.

2. The code shall contain a procedure to be followed by personnel of the board in all of the following:

- a. On entering a pharmacy.
- b. During inspection of the pharmacy.
- c. During the exit conference.

3. The code shall contain standards of conduct that personnel of the board are to follow in dealing with the staff and management of the pharmacy and the general public.

4. The board shall establish a procedure for receiving and investigating complaints of violations of this code. The board shall investigate all complaints of violations. The results of an investigation shall be forwarded to the complainant.

5. The board may adopt rules establishing sanctions for violations of this code of professional responsibility.

87 Acts, ch 215, §37 HF 594
NEW section

CHAPTER 156

PRACTICE OF FUNERAL DIRECTING AND MORTUARY SCIENCE

156.9 Revocation of license.

The board may revoke or suspend the license of a funeral director for any one of the following acts:

1. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.
2. Executing a death certificate or shipping paper for use of anyone except a funeral director or a registered apprentice who is working under the immediate personal supervision of a funeral director.
3. Any of the applicable grounds for revocation or suspension of a license provided in chapters 147 and 258A.

87 Acts, ch 30, §1 HF 614
Subsection 3 stricken and former subsection 4 renumbered 3

156.12 Funeral directors—solicitation of business— exceptions—penalty.

Every funeral director, or person acting on behalf of a funeral director, who pays or causes to be paid any money or other thing of value as a commission or gratuity for the securing of business for the funeral director, and every person who accepts or offers to accept any money or other thing of value as a commission or gratuity from a funeral director in order to secure business for the funeral director commits a simple misdemeanor. This section does not prohibit any person, firm, co-operative burial association, or corporation, subject to the provisions of this chapter, from using legitimate and honest advertising. This section does not apply to sales made in accordance with chapter 523A.

87 Acts, ch 30, §2 HF 614
Section amended

CHAPTER 159

DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

159.5 Powers and duties.

The secretary of agriculture is the head of the department of agriculture and land stewardship which shall:

1. Carry out the objects for which the department is created and maintained.
2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.
3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.
4. Maintain a weather division which shall, in co-operation with the national weather service, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phenology and climatology of the state. The division shall be headed by the state climatologist who shall be appointed by the secretary of agriculture, and shall be an officer of the national weather service, if one is detailed for that purpose by the federal government.

5. Establish volunteer weather stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and tabulate the same for permanent record.

6. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce and the general public.

7. Maintain a division of agricultural statistics, which shall, in co-operation with the United States department of agriculture statistical reporting service, gather, compile, and publish statistical information concerning the condition and progress of crops, the production of crops, livestock, livestock products, poultry, and other such related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. The statistics, when published, shall constitute official agricultural statistics for the state of Iowa. The division shall be in charge of a director who shall be appointed by the secretary of agriculture and who shall be an officer of the United States department of agriculture statistical reporting service, if one is detailed for that purpose by the federal government.

8. Establish and maintain a marketing news service division in the department which shall, in co-operation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced and handled in the state. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one be detailed for that purpose by the federal government.

9. Inspect and supervise all cold storage plants and food producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of food in a manner detrimental to its character or quality.

10. Approve all methods of probing for foreign material content of any type of grain.

11. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of this title and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

12. Establish and maintain a sheep promotion division in the department of agriculture which shall promote the consumption of lamb, mutton and the use of wool, aid in the orderly marketing of sheep and wool, and conduct other activities which are beneficial to the sheep industry in Iowa. Said division shall be in charge of a director who shall be appointed by the secretary of agriculture. Funds appropriated for the department of agriculture for state aid to the Iowa sheep association are hereby authorized to be used together with other funds available for sheep promotion in establishing and maintaining the sheep promotion division, and said funds may be drawn and expended upon the order of the director with the approval of the secretary of agriculture.

13. Establish a swine tuberculosis eradication program including, but not limited to:

a. The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis;

b. Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis;

c. Condemning any swine which has tuberculosis;

d. Depopulating any swine herd where tuberculosis is found to be generally present; and

e. Compensate the owners of condemned swine as provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

14. Annually inspect* for sanitation the areas where food is prepared and where food is served, including but not limited to the utensils, machinery, and other equipment, in the adult penal or correctional facilities operated by the Iowa department of corrections and in the state training school and the Iowa juvenile home. For purposes of this subsection, community-based correctional facilities shall be considered operated by the Iowa department of corrections.

If a municipal corporation wants its local board of health to make the inspections required by this section on facilities located within its jurisdiction, the municipal corporation may enter into an agreement with the secretary. The secretary may enter into such an agreement if the secretary finds that the local board of health has adequate resources to perform the required functions.

The secretary of agriculture shall prepare a report on the inspections and shall send a copy of the report concerning the adult penal or correctional facilities to the director of the Iowa department of corrections. A copy of the report concerning the state training school and the Iowa juvenile home shall be sent to the director of the division of child and family services of the department of human services.

15. Establish and maintain a division of soil conservation. The division administrator shall be appointed by the secretary and shall serve at the pleasure of the secretary.

16. Establish an inspection and regulation program regarding water sold in sealed containers for human consumption. As used in this subsection, "water sold in sealed containers for human consumption" includes ice sold in sealed containers and bottled water; "bottled water" means drinking water which is placed in sealed containers for the purpose of sale to the public for human consumption; and "drinking water" means water sold for drinking, culinary, or other purposes involving the likelihood of the water being ingested for human consumption but does not include distilled water, carbonated beverages, mineral water, or other beverages which contain water. The program shall include, but is not limited to, all of the following:

a. Establish, modify, or repeal rules relating to standards for testing for the presence of chemicals in water sold in sealed containers for human consumption. The standards for testing shall not be less stringent than the rules established for public drinking water supplies pursuant to chapter 455B.

b. Establish, modify, or repeal rules relating to drinking water standards for water sold in sealed containers for human consumption. The standards shall establish the maximum permissible level of any physical, chemical, biological, or radiological substance in the water and shall be as stringent as those established under the federal Food and Drug Act.

c. Establish, modify, or repeal rules relating to the labeling of water sold in sealed containers for human consumption including, but not limited to, requirements that water sold in this state shall have the words "Meets all F.D.A. standards" printed clearly and conspicuously on its label.

d. Establish, modify, or repeal rules relating to the frequency with which facilities where water is placed in sealed containers, including but not limited to ice making and bottling facilities, are inspected and tested. The frequency standard shall not be less stringent than the frequency standard for testing of public water supplies under chapter 455B.

e. A requirement that all records pertaining to sampling and analysis of water sold in sealed containers for human consumption under this subsection shall be maintained at the bottling facility or if the water is bottled outside of the state at the distributor's facility. The records shall be maintained for at least two years and shall be available upon request for review by officials of the department.

f. Provide that enforcement of this subsection shall be pursuant to chapter 189.

g. The provisions of paragraphs "a", "b", "c", and "e" shall not apply to ice produced from a public water supply as defined and regulated in chapter 455B. Ice sold in sealed containers shall be labeled or tagged with the name and location of the ice maker and whether it is produced from a public water supply. The department shall adopt rules relating to the packaging and handling of ice sold in sealed containers.

87 Acts, ch 115, §26 SF 374

*Apparently subsection 14 duties are transferred to the department of inspections and appeals; see §10A.502(2); corrective legislation will be proposed

Subsection 16, paragraph d amended

SINKHOLES AND DRAINAGE WELLS

159.28 Sinkholes—conservation easement programs.

The department shall develop and implement a program for the prevention of groundwater contamination through sinkholes. The program shall provide for education of landowners and encourage responsible chemical and land management practices in areas of the state prone to the formation of sinkholes.

The program may provide financial incentives for land management practices and the acquisition of conservation easements around sinkholes. The program may also provide financial assistance for the cleanup of wastes dumped into sinkholes.

The program shall be coordinated with the groundwater protection programs of the department of natural resources and other local, state, or federal government agencies which could compensate landowners for resource protection measures. The department shall use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund.

87 Acts, ch 225, §302 HF 631

NEW section

159.29 Agricultural drainage wells.

1. An owner of an agricultural drainage well shall register the well with the department of natural resources by January 1, 1988.

2. An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall develop, in consultation with the department of agriculture and land stewardship and the department of natural resources, a plan which proposes alternatives to the use of agricultural drainage wells by July 1, 1991.

a. Financial incentive moneys may be allocated from the financial incentive portion of the agriculture management account of the groundwater protection fund to implement alternatives to agricultural drainage wells.

b. An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall not be eligible for financial incentive moneys pursuant to paragraph "a" if the owner fails to register the well with the department of natural resources by January 1, 1988 or if the owner fails to develop a plan for alternatives in cooperation with the department of agriculture and land stewardship and the department of natural resources.

3. The department shall:

a. On July 1, 1987 initiate a pilot demonstration and research project concerning elimination of groundwater contamination attributed to the use of agricultural chemicals and agricultural drainage wells. The project shall be established in a location in North Central Iowa determined by the department to

be the most appropriate. A demonstration project shall also be established in Northeast Iowa to study techniques for the cleanup of sinkholes.

The agricultural drainage well pilot project shall be designed to identify the environmental, economic, and social problems presented by continued use or closure of agricultural drainage wells and to monitor possible contamination caused by agriculture land management practices and agricultural chemical use relative to agricultural drainage wells.

b. Develop alternative management practices based upon the findings from the demonstration projects to reduce the infiltration of synthetic organic compounds into the groundwater through agricultural drainage wells and sinkholes.

c. Examine alternatives and the costs of implementation of alternatives to the use of agricultural drainage wells, and examine the legal, technical, and hydrological constraints for integrating alternative drainage systems into existing drainage districts.

4. Financial incentive moneys expended through the use of the financial incentive portion of the agriculture management account may be provided by the department to landowners in the project areas for employing reduced chemical farming practices and land management techniques.

5. The secretary may appoint interagency committees and groups as needed to coordinate the involvement of agencies participating in department sponsored projects. The interagency committees and groups may accept grants and funds from public and private organizations.

6. The department shall publish a report on the status and findings of the pilot demonstration projects on or before July 1, 1989, and each subsequent year of the projects. The department of agriculture and land stewardship shall develop a priority system for the elimination of chemical contamination from agricultural drainage wells and sinkholes. The priority system shall incorporate available information regarding the significance of contamination, the number of registered wells in the area, and the information derived from the report prepared pursuant to this subsection. The highest priority shall be given to agricultural drainage wells for which the above criteria are best met, and the costs of necessary action are at the minimum level.

7. Beginning July 1, 1990, the department shall initiate an ongoing program to meet the goal of eliminating chemical contamination caused by the use of agricultural drainage wells by January 1, 1995 based upon the findings of the report published pursuant to subsection 6.

8. Notwithstanding the prohibitions of section 455B.267, subsection 4, an owner of an agricultural drainage well may make emergency repairs necessitated by damage to the drainage well to minimize surface runoff into the agricultural drainage well, upon the approval of the county board of supervisors or the board's designee of the county in which the agricultural drainage well is located. The approval shall be based upon the following conditions:

a. The well has been registered in accordance with both state and federal law.

b. The applicant will institute management practices including alternative crops, reduced application of chemicals, or other actions which will reduce the level of chemical contamination of the water which drains into the well.

c. The owner submits a written statement that approved emergency repairs are necessary and do not constitute a basis to avoid the eventual closure of the well if closure is later determined to be required. If a county board of supervisors or the board's designee approves the emergency repair of an agricultural drainage well,

the county board of supervisors or the board's designee shall notify the department of the approval within thirty days of the approval.

87 Acts, ch 225, §303 HF 631
NEW section

159.30 Reserved.

IOWA SEAL AGRICULTURAL PRODUCTS

159.31 Iowa seal.

A seal for agricultural products shall be created under the direction of the department of agriculture and land stewardship to identify agricultural products that have been produced or processed in the state. The department shall certify that agricultural products marked with the Iowa seal are of the quality and specifications warranted by the sellers of those products.

The department of agriculture and land stewardship shall adopt rules under chapter 17A to provide methods of identifying, marking, and grading agricultural products, to prevent any misleading use of the Iowa seal, and as necessary or advisable to fully implement this section.

A violation of a rule adopted by the department of agriculture and land stewardship to implement this section is a simple misdemeanor. A fraudulent use of the term "Iowa Seal" or of the identifying mark for the Iowa seal, or a deliberately misleading or unwarranted use of the term or identifying mark is a serious misdemeanor.

87 Acts, ch 107, §1 HF 576
NEW section

CHAPTER 163

INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

163.26 Definition.

For the purposes of this division, "garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts, and includes all waste material, by-products of a kitchen, restaurant, hotel, or slaughterhouse, every refuse accumulation of animal, fruit, or vegetable matter, liquids or otherwise, except grain not consumed, that is collected from hog sales pen floors in public stockyards and fed under the control of the department of agriculture and land stewardship. Animals or parts of animals, which are processed by slaughterhouses or rendering establishments, and which as part of the processing are heated to not less than 212 degrees F. for thirty minutes, are not garbage for purposes of this chapter.

87 Acts, ch 115, §27 SF 374
Section amended

163.30 Swine imported or native—pig dealers.

1. This section shall apply to all swine moved interstate and intrastate, except swine moved directly to slaughter or to a livestock market for sale directly to a slaughtering establishment for immediate slaughter.

2. When used in this chapter:

a. "Dealer" means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged, and who sells or exchanges only those swine which have been kept by the person solely for feeding or breeding purposes.

b. "Separate and apart" means a manner of holding swine so as not to have physical contact with other swine on the premises.

c. "Swine moved" means any physical relocation of swine to different premises, except that it does not include movement of swine when their ownership does not change, and both their prior and new locations, and the movement between such locations, are within the state of Iowa.

3. No person shall act as a dealer without first securing a dealer's license from the department. The fee for a dealer's license shall be five dollars per annum and all licenses shall expire on the first day of July following date of issue. Licenses shall be numbered and the dealer shall retain the number from year to year. To secure a license, the applicant must file with the department a bond in the sum of ten thousand dollars with the secretary named as trustee, for the use and benefit of anyone damaged by a violation of this section, except that the bond shall not be required for dealers who are bonded in the same or a greater amount than required pursuant to the federal Packers and Stockyards Act.

Each employee or agent doing business by buying for resale, selling or exchanging feeder swine in the name of a licensed dealer, shall be required to secure a permit and identification card issued by the department showing the person is employed by or represents a licensed dealer. All such permits and identification cards shall be issued upon application forms furnished by the department at a cost of three dollars per annum, and shall expire on the first day of July following the date of issue.

A permittee shall not represent more than one dealer. Failure of a licensee or permittee to comply with this chapter or a rule made pursuant to this chapter is cause for revocation by the secretary of the permit or license after notice to the alleged offender and the holding of a hearing by the secretary. Rules shall be made in accordance with chapter 17A. A rule, the violation of which is made the basis for revocation, except temporary emergency rules, shall first have been approved after public hearing as provided in section 17A.4 after giving twenty days' notice of the hearing as follows:

By mailing notice, by ordinary mail, to every person filing a request for notice accompanied by an addressed envelope with prepaid postage. Any person may file such a request to be listed with any agency for notice for the time and place for all hearings on proposed rules, which request shall be accompanied by a remittance of five dollars. Such fee shall be added to the operating fund of the department. The listing shall expire semiannually on January 1 and July 1.

4. All swine moved shall be individually identified with a distinctive and easily discernible ear tag affixed in either ear of the animal or other identification acceptable to the department, which has been specified by rule promulgated under the department's rulemaking authority. The department shall make ear tags available at convenient locations within each county and shall sell such tags at a price not exceeding the cost to producers and others to comply with this section.

Every seller, dealer and market operator shall keep a record of the ear tag numbers, or other approved identification, and the farm of origin of swine moved by or through that person, which records shall be made available by that person to any appropriate representative of the department or the United States department of agriculture.

5. All swine moved shall be accompanied by an official health certificate or veterinarian inspection certificate issued by the state of origin and prepared and signed by a veterinarian. The health certificate or veterinarian inspection certificate shall show the point of origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

However, swine may be moved intrastate directly to an approved state, federal or auction market without such identification or certification, there to be identified and certificated.

However, registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from this identification requirement. In addition, native Iowa swine moved from farm to farm may be excepted from the identification requirement if the seller and purchaser sign a statement providing that feeder pigs will not be commingled for a period of thirty days and such fact is stated on the health certificate.

6. The department may require issuance of movement permits on certain categories of swine moved, prior to their movement, pursuant to departmental rule. The rule shall be promulgated when in the judgment of the secretary, such movements would otherwise threaten or imperil the eradication of hog cholera in Iowa.

7. All swine moved shall be quarantined separate and apart from other swine located at the Iowa farm of destination for thirty days beginning with their arrival at such premises, or if such incoming swine are not held separate and apart, all swine on such premises shall be thus quarantined, except animals moving from such premises directly to slaughter.

There can only be one transfer by a dealer, involving not more than two markets, prior to quarantine.

8. The use of anti-hog-cholera serum or antibody concentrate shall be in accordance with rules issued by the department.

9. All swine found by a registered veterinarian to have any infectious, contagious, or communicable swine disease after delivery to any livestock sale barn or auction market for resale other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine may not be moved from such premises for any purpose unless an official health certificate or veterinarian inspection certificate accompanies the movement or unless they are sent to slaughter. This subsection shall in no way supersede the requirements of sections 163A.2 and 163A.3.

87 Acts, ch 115, §28 SF 374
Subsection 3, unnumbered paragraph 3 amended

CHAPTER 166

HOG-CHOLERA VIRUS AND SERUM

166.3 Permit to manufacture or sell.

Every person, before engaging as a manufacturer of, or dealer in, biological products shall obtain from the department a permit for that purpose and shall be required to have a separate permit for each place of business. A pharmacy licensed under chapter 155A shall not be required to obtain a dealer's permit to deal in biological products.

87 Acts, ch 215, §42 HF 594
Section amended

CHAPTER 167

USE AND DISPOSAL OF DEAD ANIMALS

167.18 Duty to dispose of dead bodies.

A person who has been caring for or who owns an animal that has died shall not allow the carcass to lie about the person's premises. The carcass shall be disposed

of within twenty-four hours after death by cooking, burying, or burning, as provided in this chapter, or by disposing of it, within the allowed time, to a person licensed to dispose of it.

87 Acts, ch 96, §1 SF 177
Section amended

CHAPTER 170A

IOWA FOOD SERVICE SANITATION CODE

170A.17 Bed and breakfast inn.

1. This chapter does not apply to a bed and breakfast inn as defined in section 170B.2, subsection 1, if the inn provides food service to overnight guests only.

2. This chapter does apply to a bed and breakfast inn which provides food service to the general public other than its overnight guests, but separate kitchen facilities shall not be required.

87 Acts, ch 202, §1 HF 556
NEW section

CHAPTER 170B

IOWA HOTEL SANITATION CODE

170B.2 Definitions.

For purposes of the Iowa hotel sanitation code, unless a different meaning is clearly indicated by the context:

1. "*Bed and breakfast inn*" means a hotel which has nine or fewer guest rooms.

2. "*Director*" means the director of the department of inspections and appeals or the chief inspector of the inspections division of the department of inspections and appeals.

3. "*Department*" means the department of inspections and appeals.

4. "*Guest room*" shall mean any bedroom or other sleeping quarters for transient guests in a hotel.

5. "*Hotel*" shall mean any building or structure, equipped, used, advertised as, or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished transient guests for hire.

6. "*Local board of health*" means a county, city, or district board of health.

7. "*Municipal corporation*" means a political subdivision of this state.

8. "*Regulatory authority*" means the department or a local board of health that has entered into an agreement with the director pursuant to section 170B.3 for authority to enforce the Iowa hotel sanitation code in its jurisdiction.

87 Acts, ch 202, §2 HF 556
NEW subsection 1 and former subsections 1-7 renumbered as 2-8

170B.21 Bed and breakfast inn.

A bed and breakfast inn is subject to regulation, licensing, and inspection under this chapter, but separate toilet and lavatory facilities shall not be required for each guest room.

87 Acts, ch 202, §3 HF 556
NEW section

CHAPTER 172C

CORPORATE OR PARTNERSHIP FARMING

172C.5 Restrictions on authorized farm corporations and authorized trusts.

An authorized farm corporation or authorized trust shall not, on or after July 1, 1987, either directly or indirectly, acquire or otherwise obtain or lease

agricultural land, if the total agricultural land either directly or indirectly owned or leased by the authorized farm corporation or authorized trust would then exceed one thousand five hundred acres. However, this paragraph does not apply to agricultural land that is leased by an authorized farm corporation or authorized trust to the immediate prior owner of the land for the purpose of farming, as defined in section 172C.1. Upon cessation of the lease to the immediate prior owner, the authorized farm corporation or authorized trust shall, within three years following the date of the cessation, sell or otherwise dispose of the agricultural land leased to the immediate prior owner. This paragraph also does not apply to land that is held or acquired and maintained to protect significant elements of the state's natural open space heritage, including but not limited to significant river, lake, wetland, prairie, forest areas, other biologically significant areas, land containing significant archaeological, historical, or cultural value, or fish or wildlife habitats, as defined in rules adopted by the department of natural resources.

A person shall not after July 1, 1987 become a stockholder of any authorized farm corporation if the person is a stockholder of any other authorized farm corporation or a beneficiary of an authorized trust. A person shall not after July 1, 1987 become a beneficiary of an authorized trust if the person is a beneficiary of another authorized trust or a stockholder of an authorized farm corporation.

Any authorized farm corporation or authorized trust violating the provisions of this section shall upon conviction, be punished by a fine of not more than fifty thousand dollars and shall divest itself of any land acquired in violation of this section within one year after conviction. A penalty of not more than one thousand dollars shall be imposed on a person who becomes a stockholder of an authorized farm corporation or a beneficiary of an authorized trust in violation of this section. The person shall divest the interest held by the person in the corporation or trust to comply with this section. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

87 Acts, ch 146, §1 HF 633
NEW section

CHAPTER 173

STATE FAIR AND EXPOSITION

173.1 State fair authority.

The Iowa state fair authority is established as a public instrumentality of the state. The authority is not an agency of state government. However, the authority is considered a state agency and its employees state employees for the purposes of chapter 17A, the merit system provisions of chapter 19A, and chapters 20, 25A, 91B, 97B, and 509A. The authority is established to conduct an annual state fair and exposition on the Iowa state fairgrounds and to conduct other interim events consistent with its rules. The powers of the authority are vested in the Iowa state fair board. The Iowa state fair board consists of the following:

1. The governor of the state, the secretary of agriculture, and the president of the Iowa State University of science and technology or their qualified representatives.
2. One director from each congressional district and three directors at large, to be elected at a convention as provided in section 173.2.
3. A president and vice president to be elected by the state fair board from the nine elected directors.

4. A secretary and a treasurer to be elected by the board, and who shall be nonvoting members.

87 Acts, ch 233, §225 SF 511
Section stricken and rewritten

173.2 Convention.

A convention shall be held at a time and place in Iowa to be designated by the Iowa state fair board each year, not to be set before a complete year audit can be presented to the convention, to elect members of the state fair board and conduct other business of the board. The board shall give sixty days' notice of the location of the convention to all agricultural associations and persons eligible to attend. The convention shall be composed of:

1. The members of the state fair board as then organized.
2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate therefrom accredited in writing, who shall be a resident of the county.
3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the state fair board in the manner provided by law as a basis for state aid. The board shall promptly report such failure to the county auditor.
4. The president, or an accredited representative, of the state horticultural society.
5. The president, or an accredited representative, of the Iowa state dairy association.
6. The president, or an accredited representative, of the Iowa beef cattle producers association.
7. The president, or an accredited representative, of the Iowa crop improvement association.
8. The president, or an accredited representative, of the Iowa pork producers council.
9. The president, or an accredited representative, of the Iowa horse industry council.
10. The president, or an accredited representative, of the Iowa sheep and wool promotion board.
11. The president, or an accredited representative, of the Iowa home economists association.
12. The president, or an accredited representative, of the Iowa dietetics association.
13. The chairperson, or an accredited representative, of the Iowa arts council.
14. The president, or an accredited representative, of the state board of education.

87 Acts, ch 115, §29 SF 374
Subsections 4, 8 and 10 amended

173.9 Secretary.

The board shall appoint a secretary who shall hold office for one year. The secretary shall:

1. Administer the policies set by the board.
2. Employ other employees and agents as the secretary deems necessary for carrying out the policies of the board and to conduct the affairs of the state fair. The secretary may fix the duties and compensation of any employees or agents with the approval of the board.
3. Keep a complete record of the annual convention and of all meetings of the board.
4. Draw all warrants on the treasurer of the board and keep a correct account of them.

5. Perform other duties as the board directs.

87 Acts, ch 233, §226 SF 511
Section stricken and rewritten

173.10 Salary of secretary.

The secretary shall receive the salary fixed by the board.

87 Acts, ch 233, §227 SF 511
Section amended

173.14 Functions of the board.

The state fair board has the custody and control of the state fairgrounds, including the buildings and equipment on it belonging to the state, and may:

1. Hold an annual fair and exposition on those grounds. All revenue generated by the fair and any interim uses shall be retained solely by the board.
2. Prepare premium lists and establish rules of exhibitors for the fair which shall be published by the board not later than sixty days prior to the opening of the fair.
3. Grant a written permit to persons as it deems proper to sell fruit, provisions, and other lawful articles under rules the board prescribes.
4. Appoint security personnel as the president deems necessary.
5. Take and hold property by gift, devise, or bequest for fair purposes. The president, secretary, and treasurer of the board shall have custody and control of the property, subject to the action of the board. Those officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.
6. Erect and repair buildings on the grounds and make other necessary improvements.
7. Grant written permission to persons to use the fairgrounds when the fair is not in progress.
8. Take, acquire, hold, and dispose of property by deed, gift, devise, bequest, lease, or eminent domain. The title to real estate acquired under this subsection and improvements erected on the real estate shall be taken and held in the name of the state of Iowa and shall be under the custody and control of the board. In the exercise of the power of eminent domain the board shall proceed in the manner provided in chapters 471 and 472.
9. Solicit and accept contributions from private sources for the purpose of financing and supporting the fair.
10. Make an agreement with the Iowa highway safety patrol to provide for security during the annual fair and exposition and interim events.

87 Acts, ch 233, §228 SF 511
Section stricken and rewritten

173.14A General corporate powers of the authority.

The authority has all of the general corporate powers needed to carry out its purposes and duties, and to exercise its specific powers including, but not limited to, the power to:

1. Issue its negotiable bonds and notes as provided in this chapter.
2. Sue and be sued in its own name.
3. Have and alter a corporate seal.
4. Make and alter bylaws for its management consistent with this chapter.
5. Make and execute agreements, contracts, and other instruments, with any public or private entity.
6. Accept appropriations, gifts, grants, loans, or other aid from public or private entities.

7. Make, alter, and repeal rules consistent with this chapter, subject to chapter 17A.

87 Acts, ch 233, §229 SF 511
NEW section

173.14B Bonds and notes.

1. The board may issue and sell negotiable revenue bonds of the authority in denominations and amounts as the board deems for the best interests of the fair, for any of the following purposes after authorization by a constitutional majority of each house of the general assembly and approval by the governor:

- a. To acquire real estate to be devoted to uses for the fair.
- b. To pay any expenses or costs incidental to a building or repair project.
- c. To provide sufficient funds for the advancement of any of its corporate purposes.

2. The board may issue negotiable bonds and notes of the authority in principal amounts which are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the board incident to and necessary or convenient to carry out its purposes and powers, subject to authorization and approval required under subsection 1. However, the total principal amount of bonds and notes outstanding at any time shall not exceed one hundred fifty million dollars. The bonds and notes are deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

3. Bonds and notes are payable solely out of the moneys, assets, or revenues of the authority and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets, or revenues. Bonds or notes are not an obligation of this state or its political subdivisions other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely from sources provided in this chapter, and the authority shall not pledge the credit or taxing power of this state or its political subdivisions other than the authority or make its debts payable out of any moneys except those of the authority.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or its political subdivisions other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the board prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the president or vice president, attested by the manual or facsimile signature of the secretary, have impressed or imprinted on it the seal of the authority or facsimile of it, and coupons attached shall be signed with the facsimile signature of the president or vice president, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places and with reserved rights of prior redemption, as the board prescribes, be sold at prices, at public or private sale, and in a manner as the board prescribes, and the board may pay all expenses, premiums, and commissions which it deems necessary or advantageous in connection with the issuance and sale; and be issued subject to the terms, conditions, and covenant providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the board for the most advantageous sale,

which may include, but are not limited to, covenants with the holders of the bonds as to those matters set forth in section 220.26, subsection 4, paragraph "b".

5. The board may issue bonds of the authority for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of the bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with this chapter. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to this chapter in the same manner and to the same extent as other bonds.

6. The board may issue negotiable bond anticipation notes of the authority and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged or from the proceeds of the sale of bonds in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds and notes and the resolution of the board may contain any provisions, conditions, or limitations, not inconsistent with this subsection, which the bonds or a bond resolution of the board may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust, or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under article 9 of the uniform commercial code or any other law of the state is required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created is binding from and after the time it is made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Members of the board and any person executing the authority's bonds, notes, or other obligations are not liable personally on the bonds, notes, or other obligations or subject to personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The board shall publish a notice of intention to issue bonds or notes in a newspaper published and of general circulation in the state. The notice shall include a statement of the maximum amount of bonds or notes proposed to be issued, and in general, what net revenues will be pledged to pay the bonds or notes and interest on them. An action shall not be brought questioning the legality of the bonds or notes, the power of the board to issue the bonds or notes, or the legality of any proceedings in connection with the authorization or issuance of the bonds or notes after sixty days from the date of publication of the notice.

87 Acts, ch 233, §230 SF 511

State fairgrounds study; limit on issuance of bonds before January 15, 1988; 87 Acts, ch 233, §235 SF 511
NEW section

173.16 Maintenance of state fair.

All expenses incurred in maintaining the state fairgrounds and in conducting the annual fair on it, including the compensation and expenses of the officers,

members, and employees of the board, shall be recorded by the secretary and paid from the state fair receipts, unless a specific appropriation has been provided for that purpose. The board may request special capital improvement appropriations from the state and may request emergency funding from the executive council for natural disasters. The board may request that the department of transportation provide maintenance in accordance with section 307A.2, subsection 11.

87 Acts, ch 233, §231 SF 511
Section amended

173.21 Annual report to governor.

The board shall file with the governor each year by February 15 a report containing the following information relative to the state fair and exposition and the district and county fairs:

1. A complete account of the annual state fair and exposition.
2. The proceedings of the annual state agricultural convention.
3. The proceedings of the annual county and district fair managers convention.

87 Acts, ch 233, §232 SF 511
Unnumbered paragraph 1 amended

173.22 Reserved.

173.23 Lien on property.

The board has a prior lien upon the property of any concessionaire, exhibitor, or person, immediately upon the property being brought onto the grounds, to secure existing or future indebtedness.

87 Acts, ch 233, §233 SF 511
NEW section

173.24 Exemption of state fair by the state's purchasing procedures.

The state fair is exempt from the state system of uniform purchasing procedures. However, the board may contract with the department of general services to purchase any items through the state system. The board shall adopt its own system of uniform standards and specifications for purchasing.

87 Acts, ch 233, §234 SF 511
NEW section

CHAPTER 175

AGRICULTURAL DEVELOPMENT

175.2 Definitions.

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

1. "Agricultural land" means land suitable for use in farming.
2. "Agricultural improvements" means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. "Agricultural improvements" includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.
3. "Agricultural producer" means a person that engages or wishes to engage or intends to engage in the business of producing and marketing agricultural produce in this state.
4. "Authority" means the agricultural development authority established in section 175.3.
5. "Bankhead-Jones Farm Tenant Act" means the Act cited as 50 Stat. 522 (1937), formerly codified as 7 U.S.C. §1000 et seq., repealed by Pub. L. No. 87-128 (1961).
6. "Beginning farmer" means an individual or partnership with a low or moderate net worth that engages in farming or wishes to engage in farming.

7. "*Bonds*" means bonds issued by the authority pursuant to this chapter.

8. "*Depreciable agricultural property*" means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the Internal Revenue Code of 1954 as defined in section 422.3.

9. "*Farming*" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority by rules subject to chapter 17A.

10. "*Lending institution*" means a bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, including without limitation the federal land bank or any of its local associations, or any other financial institution or entity authorized to make farm operating loans in this state.

11. "*Low or moderate net worth*" means:

a. For an individual, an aggregate net worth of the individual and the individual's spouse and minor children of less than two hundred thousand dollars.

b. For a partnership, an aggregate net worth of all partners, including each partner's net capital in the partnership, and each partner's spouse and minor children of less than four hundred thousand dollars. However, the aggregate net worth of each partner and that partner's spouse and minor children shall not exceed two hundred thousand dollars.

12. "*Mortgage*" means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions and encumbrances acceptable to the authority, including any other mortgage liens of equal standing with or subordinate to the mortgage loan retained by a seller or conveyed to a mortgage lender, on a fee interest in agricultural land and agricultural improvements.

13. "*Mortgage lender*" means a bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, including without limitation the federal land bank or any of its local associations, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state.

14. "*Mortgage loan*" means a financial obligation secured by a mortgage.

15. "*Net worth*" means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's or partnership's net worth. Assets shall be valued at fair market value.

16. "*Note*" means a bond anticipation note or other obligation or evidence of indebtedness issued by the authority pursuant to this chapter.

17. "*Secured loan*" means a financial obligation secured by a chattel mortgage, security agreement or other instrument creating a lien on an interest in depreciable agricultural property.

18. "*State agency*" means any board, commission, department, public officer, or other agency or authority of the state of Iowa.

19. "*Permanent soil and water conservation practices*" and "*temporary soil and water conservation practices*" have the same meaning as defined in section 467A.42.

20. "*Conservation farm equipment*" means the specialized planters, cultivators, and tillage equipment used for reduced tillage or no-till planting of row crops.

The authority may establish by rule further definitions applicable to this chapter and clarification of the definitions in this section, as necessary to assure

eligibility for funds, insurance or guarantees available under federal laws and to carry out the public purposes of this chapter.

87 Acts, ch 52, §1 SF 463; 87 Acts, ch 169, §1 HF 626
See Code editor's note
Subsection 3 amended

175.3 Establishment of authority.

1. The agricultural development authority is established within the department of agriculture and land stewardship. The authority is constituted a public instrumentality and agency of the state exercising public and essential governmental functions. The authority is established to undertake programs which assist beginning farmers in purchasing agricultural land and agricultural improvements and depreciable agricultural property for the purpose of farming, and programs which provide financing to farmers for permanent soil and water conservation practices on agricultural land within the state or for the acquisition of conservation farm equipment, and programs to assist farmers within the state in financing operating expenses and cash flow requirements of farming. The authority shall also develop programs to assist qualified agricultural producers within the state with financing other capital requirements or operating expenses. The powers of the authority are vested in and exercised by a board of eleven members with nine members appointed by the governor subject to confirmation by the senate. The treasurer of state or the treasurer's designee and the secretary of agriculture or the secretary's designee are ex officio nonvoting members. No more than five appointed members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent financial institutions experienced in agricultural lending, the real estate sales industry, farmers, beginning farmers, average taxpayers, local government, soil and water conservation district officials, and other persons specially interested in family farm development.

2. The appointed members of the authority shall be appointed by the governor for terms of six years except that, of the first appointments, three members shall be appointed for terms of two years and three members shall be appointed for a term of four years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. An appointed member of the authority may also serve as a member of the Iowa finance authority.

3. Five voting members of the authority constitute a quorum and the affirmative vote of a majority of the voting members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. The appointed members of the authority are entitled to receive forty dollars per diem for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations or to implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority including any net earnings shall vest in the state.

87 Acts, ch 23, §4 SF 382
Subsection 1 amended

175.4 Legislative findings.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious problem in this state regarding the ability of nonestablished farmers to acquire agricultural land and agricultural improvements and depreciable agricultural property in order to enter farming.

4. This barrier to entry into farming is conducive to consolidation of acreage of agricultural land with fewer individuals resulting in a grave threat to the traditional family farm.

5. These conditions result in a loss in population, unemployment and a movement of persons from rural communities to urban areas accompanied by added costs to communities for creation of new public facilities and services.

6. One major cause of this condition has been recurrent shortages of funds in private channels and the high interest cost of borrowing.

7. These shortages and costs have made the sale and purchase of agricultural land to beginning farmers a virtual impossibility in many parts of the state.

8. The ordinary operations of private enterprise have not in the past corrected these conditions.

9. A stable supply of adequate funds for agricultural financing is required to encourage beginning farmers in an orderly and sustained manner and to reduce the problems described in this section.

10. Article IX, section 3, of the Constitution of the State of Iowa requires that, "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement," and agricultural improvement and the public good are served by a policy of facilitating access to capital by beginning farmers unable to obtain capital elsewhere in order to preserve, encourage and protect the family farm which has been the economic, political and social backbone of rural Iowa.

11. It is necessary to create an agricultural development authority to encourage ownership of farms by beginning farmers by providing purchase money loans to beginning farmers who are not able to obtain adequate capital elsewhere to provide such funds and to lower costs through the use of public financing.

12. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

13. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa's prosperity.

14. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state and for the acquisition of conservation farm equipment.

15. There exists a serious problem in this state regarding the ability of farmers to obtain affordable operating loans for reasonable and necessary expenses and cash flow requirements of farming.

16. Farming is one of the principal pursuits of the inhabitants of this state. Many other industries and pursuits, in turn, are wholly dependent upon farming.

17. The inability of farmers to obtain affordable operating loans is conducive to a general decline of the economy in this state.

18. It is necessary to establish an agricultural loan assistance program in this state to assist farmers in obtaining adequate financing at affordable rates for operating expenses and thereby assist in the stabilization of the economic condition of this state.

19. A serious problem continues to exist in this state regarding the ability of agricultural producers to obtain, retain, restructure, or service loans or other financing on a reasonable and affordable basis for operating expenses, cash flow requirements, and capital asset acquisition or maintenance.

20. Because the Iowa economy is dependent upon the production and marketing of agricultural produce, the inability of agricultural producers to obtain, retain, restructure, or service loans or other financing on a reasonable and an affordable basis for operating expenses, cash flow requirements, or capital asset acquisition or maintenance contributes to a general decline of the state's economy.

21. The decline in the number of beef cattle production operations is a serious problem within the state, resulting in the conversion of land used for pasture to row crop production, which threatens to destroy a significant part of Iowa's agricultural base and damage the economic viability of the state.

22. It is necessary to create a program in this state to assist agricultural producers who have established or intend to establish beef cattle production operations, to obtain adequate financing, and management assistance and training, and to convert land used for row crop production to pasture.

87 Acts, ch 52, §2 SF 463; 87 Acts, ch 169, §2 HF 626

NEW subsections 19 and 20

NEW subsections 21 and 22

175.6 General powers.

The authority has all of the general powers needed to carry out its purposes and duties, and to exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds and notes as provided in this chapter in order to finance its programs.
2. Sue and be sued in its own name.
3. Have and alter a corporate seal.
4. Make and alter bylaws for its management consistent with the provisions of this chapter.
5. Make and execute agreements, contracts and other instruments, with any public or private entity, including but not limited to, any federal governmental agency or instrumentality. The authority may make and execute contracts with any firm of independent certified public accountants to prepare an annual report on behalf of the authority. The authority may make and execute contracts with mortgage lenders for the servicing of mortgage and secured loans. All political subdivisions, other public agencies and state agencies may enter into contracts and otherwise co-operate with the authority.
6. Acquire, hold, improve, mortgage, lease and dispose of real and personal property, including but not limited to, the power to sell at public or private sale, with or without public bidding, any property, mortgage or secured loan or other obligation held by it.
7. Procure insurance against any loss in connection with its operations and property interests, including pool insurance on any group of mortgage or secured loans.
8. Fix and collect fees and charges for its services.

9. Subject to an agreement with bondholders or noteholders, invest or deposit moneys of the authority in a manner determined by the authority, notwithstanding chapter 452 or 453.

10. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

11. Provide to public and private entities technical assistance and counseling related to the authority's purposes.

12. In co-operation with other local, state or federal governmental agencies or instrumentalities, conduct studies of beginning farmer or agricultural producer agricultural needs, and gather and compile data useful to facilitate decision making.

13. Contract with architects, engineers, attorneys, accountants, housing construction and finance experts, and other advisors or enter into contracts or agreements for such services with local, state or federal governmental agencies.

14. Make, alter and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

87 Acts, ch 52, §3 SF 463
Subsection 12 amended

175.10 Surplus moneys.

Moneys declared by the authority to be surplus moneys which are not required to service bonds and notes, to pay administrative expenses of the authority or to accumulate necessary operating or loss reserves, shall be used by the authority to provide loans, grants, subsidies, and other services or assistance to beginning farmers or agricultural producers through any of the programs authorized in this chapter.

87 Acts, ch 52, §4 SF 463
Section amended

175.13A Financial assistance for agricultural producers.

1. In addition to the other programs authorized pursuant to this chapter, the authority is authorized to provide any type of economic assistance directly or indirectly to agricultural producers, and may develop and implement programs including, but not limited to, the making of loan guarantees, interest buy-downs, grants, secured or unsecured direct loans, secondary market purchases of loans or mortgages, loans to mortgage lenders, lending institutions, other agricultural lenders as designated by rule of the authority, or entities that provide funds or credits to such lenders or institutions, to assist agricultural producers within the state. The authority may exercise any of the powers granted to it in this chapter in order to fulfill the goal of providing financial assistance to agricultural producers. The authority may participate in and cooperate with programs of any agency or instrumentality of the federal government or with programs of any other state agency in the administration of the programs to provide economic assistance to agricultural producers.

2. The authority shall provide in any program developed and implemented pursuant to this section that assistance shall be provided only if the following criteria are satisfied:

a. The agricultural producer is a resident of the state.

b. The agricultural producer's land and farm operations are located within the state.

c. Based upon the agricultural producer's net worth, cash flow, debt-to-asset ratio, and other criteria as prescribed by rule of the authority, the authority determines that without such assistance the agricultural producer could not reasonably be expected to be able to obtain, retain, restructure, or service loans or

other financing for operating expenses, cash flow requirements, or capital acquisition and maintenance upon a reasonable and affordable basis.

d. Other criteria as the authority prescribes by rule.

3. The authority is granted all powers which are necessary or useful to develop and implement programs and authorizations pursuant to subsection 1. These powers include, but are not limited to:

a. All general powers stated in section 175.6.

b. The power to make or enter into or to require the making or entry into of agreements of any type, with or by any person, that are necessary to effect the purposes of this section. These agreements may include, but are not limited to contracts, notes, bonds, guarantees, mortgages, loan agreements, trust indentures, reimbursement agreements, letters of credit or other liquidity or credit enhancement agreements, reserve agreements, loan or mortgage purchase agreements, buy-down agreements, grants, collateral or security agreements, insurance contracts, or other similar documents. The agreements may contain any terms and conditions which the authority determines are reasonably necessary or useful to implement the purposes of this section or which are usually included in agreements or documents between private or public persons in similar transactions.

c. The power to issue its bonds or notes and expend or commit moneys for the purposes set forth in subsection 1. The authority may provide in the documents authorizing its bonds or notes that their principal and interest shall be limited obligations payable solely out of the revenues derived from a specific program or source and do not constitute an indebtedness of the authority or a charge against the authority's general credit or general fund. Alternatively, the authority may provide that the principal and interest of specified bonds or notes do constitute an indebtedness of the authority and a charge against the authority's general credit or general fund.

d. The power to participate in any federal or other state program designed to assist agricultural producers or in related federal or state programs.

e. The power to require submission of evidence satisfactory to the authority of the receipt by an agricultural producer of the assistance intended under a program developed and implemented pursuant to this section. In that connection, the authority, through its members, employees or agents, may inspect the books and records of any person receiving or involved in the provision of assistance in accordance with this section.

f. The power to establish by rule appropriate enforcement provisions in order to assure compliance with this section and rules adopted pursuant to this section, to seek the enforcement of such rules and the terms of any agreement or document by decree of any court of competent jurisdiction, and to require as a condition of providing assistance pursuant to this section the consent of any person receiving or involved in the provision of the assistance to the jurisdiction of the courts of this state over any enforcement proceeding.

g. The power to require, as a condition of the provision of assistance pursuant to this section, any representations and warranties on the part of any person receiving or involved in providing such assistance that the authority determines are reasonably necessary or useful to carry out the purposes of this section. A person receiving or involved in providing assistance pursuant to this section is liable to the authority for damages suffered by the authority by reason of a misrepresentation or the breach of a warranty.

4. All persons, public and private, are authorized to cooperate with the authority and to participate in the programs developed and implemented pursuant to this section and in accordance with the rules of the authority.

5. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.19, subsection 4, apply to bonds or notes issued pursuant to powers

granted to the authority under this section, to reserve funds, to appropriations, and to the remedies of bondholders and noteholders except to the extent that they are inconsistent with this section.

87 Acts, ch 52, §5 SF 463

Amendments effective April 24, 1987; 87 Acts, ch 52, §7

Section amended

175.17 Bonds and notes.

1. The authority may issue its negotiable bonds and notes in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

2. Bonds and notes are payable solely and only out of the moneys, assets or revenues of the authority and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority shall not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority or make its debts payable out of any moneys except those of the authority.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairperson or vice chairperson, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to those matters set forth in section 220.26, subsection 4, paragraph "b".

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged or from the proceeds of the sale of bonds in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds and notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under article 9* of the uniform commercial code, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract or otherwise against the pledgor.

8. Members of the authority and any person executing its bonds, notes or other obligations are not liable personally on the bonds, notes or other obligations or subject to personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The authority shall publish a notice of intention to issue bonds or notes in a newspaper published and of general circulation in the state. The notice shall include a statement of the maximum amount of bonds or notes proposed to be issued, and in general, what net revenues will be pledged to pay the bonds or notes and interest thereon. An action shall not be brought questioning the legality of the bonds or notes or the power of the authority to issue the bonds or notes or to the legality of any proceedings in connection with the authorization or issuance of the bonds or notes after sixty days from the date of publication of the notice.

87 Acts, ch 52, §6 SF 463
Subsection 1 amended

175.34 Soil conservation loan program.

1. The authority shall establish a soil conservation loan program to facilitate the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment for agricultural land within the state by making financing for this program available to credit worthy owners or

operators of agricultural land within the state. The authority may provide this financing under the program by direct loans, loans to lenders, and the purchase of loans in the manner provided in sections 175.13 through 175.15, except that the financing pursuant to these sections shall not be limited to beginning farmers. In addition under the program, the authority may enter into a loan agreement with the owner or operator to finance in whole or in part the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment for agricultural land in the state. The repayment obligation of the owner or operator may be unsecured, or may be secured by a mortgage or security agreement or by other security as the authority deems advisable, and may be evidenced by one or more notes of the owner or operator. The loan agreement may contain terms and conditions as the authority deems advisable.

2. In addition to the other conditions and criteria established for the soil conservation loan program, the following apply:

a. Loans made pursuant to the soil conservation loan program shall only be made to the owner or operator of a farm located within the state for which a conservation plan has been developed by the soil and water conservation district and the project for which the loan is to be made has been approved by the district. However, loans under the soil conservation loan program for implementation of a permanent soil and water conservation practice shall not be remitted to the applicant until the applicant provides evidence that payment of the permanent soil and water conservation practice is arranged for and the soil and water conservation district certifies that the practice is completed and approved.

b. The program and financing provided pursuant to the program shall not be limited to beginning farmers but shall be available to all credit worthy owners or operators of agricultural land within the state, however in providing financing for the acquisition of conservation farm equipment preference shall be given those owners or operators of agricultural land who have the lower net worths.

c. The division of soil conservation or any other state agency and the commissioners and staffs of the soil and water conservation districts may provide technical and financial assistance to the authority or in connection with the soil conservation loan program to assure the success of this program.

d. The amount of financing that may be provided under the soil conservation loan program shall not exceed the cost of implementing the permanent soil and water conservation practice or of acquiring the conservation farm equipment which the owner or operator is seeking to implement or acquire less any amounts the owner or operator will receive in public cost-sharing funds under chapter 467A or other provisions of state or federal law for the implementation or acquisition. However, the maximum amount of loans that an owner or operator may receive pursuant to this program shall not exceed fifty thousand dollars for permanent soil and water conservation practices and fifty thousand dollars for conservation farm equipment.

e. If a cooperator of a soil and water conservation district qualifies for cost sharing under a state soil conservation cost share program, the cooperator is eligible for a loan request. In granting these requests the authority shall give preference to those with the lower net worths.

3. The authority may issue its bonds and notes for the purposes set forth in subsection 1 and may enter into a lending agreement or purchase agreement with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. Bonds and notes must be authorized by a resolution of the authority. However, the authority shall not have a total principal amount of bonds and notes outstanding under this section at any time in excess of twenty-five percent of the limitation on the amount of bonds and notes at any time specified in section 175.17, subsection 1. The authority and the bondholders or noteholders may enter into an agreement to provide for any of the following:

a. That the proceeds of the bonds and notes and investments thereon may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority, may collect, invest, and apply the amounts payable under the loan agreement or any other security instrument securing the debt obligation of the owner or operator of the agricultural land.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreement or security instrument on their own behalf without the appointment or designation of a trustee and if there is a default in the principal or interest on the bonds or notes or in the performance of any agreement contained therein, the payment or performance may be enforced in accordance with the provisions contained therein.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced and any collateral sold under proceedings or actions permitted by law and a trustee under the mortgage or security agreement or the holder of any bonds or notes secured thereby may become a purchaser if it is the highest bidder.

e. Other terms and conditions.

4. The authority may provide in the resolution authorizing the issuance of the bonds or notes that the principal and interest are limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the owner or operator of the agricultural land, and that the principal and interest do not constitute an indebtedness of the authority or a charge against its general credit or general fund.

5. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.12, section 175.17, subsection 9 and section 175.19, subsection 4, apply to bonds or notes issued pursuant to and powers granted to the authority under this section except to the extent that they are inconsistent with this section.

87 Acts, ch 23, § 5 SF 382

Subsection 2, paragraphs a, c and e amended

175.35 Agricultural loan assistance program.

1. The authority shall establish and develop an agricultural loan assistance program to facilitate the availability of affordable operating capital to farmers by providing grants to lending institutions as provided by this section.

2. The authority shall make available to farmers and lending institutions eligibility application forms for the agricultural loan assistance program. Applications to the authority for assistance under this section shall be executed jointly by the lending institution and the farmer upon approved forms.

3. The authority shall provide in the agricultural loan assistance program that a grant will be provided in conjunction with a farmer's operating loan only if the following criteria are satisfied:

a. The farmer is a resident of the state.

b. The farmer is an individual, a partnership, or a family farm corporation, as defined in section 172C.1, subsection 8.

c. The farming operation in which the farmer will use the operating loan is located within the state.

d. The operating loan will be used by the farmer for reasonable and necessary expenses and cash flow requirements of farming as defined by rules of the authority.

e. The farmer has made full disclosure of the farmer's finances to the lending institution and to the authority, to the extent required by the authority.

f. Additional requirements as are prescribed by the authority by rule, which may include but are not limited to:

- (1) Participation in federal crop insurance programs, where available.
- (2) A consideration of the borrower's agreement to maintain farm management techniques and standards established by the authority.
- (3) Participation in federal farm programs, where applicable.
- (4) The maximized use of available loan guarantees where applicable.
- (5) A consideration of factors demonstrating the farmer's need for operating loan assistance and the probability of success with the assistance in the farming operation in which the operating loan will be used, including net worth, debt-to-asset ratio, debt service coverage ratio, projected income, and projected cash flow.

g. The farmer has a net worth of not more than two hundred thousand dollars.

h. The farmer develops a farm unit conservation plan, as defined in section 467A.42, with the commissioners of the soil conservation district where the land is located within one year from the date of entering into the program, unless the authority prescribes a shorter period by rule.

4. The authority may participate in and cooperate with programs of an agency or instrumentality of the federal government in the administration of the agricultural loan assistance program. The authority may provide in the agricultural loan assistance program that a grant may be provided in conjunction with a farmer's operating loan only if the farmer and lending institution participate in one or more operating loan assistance programs of an agency or instrumentality of the federal government, which are determined to be appropriate by the authority.

5. Upon approval of an eligibility application and a determination by the authority that assistance pursuant to the agricultural loan assistance program is needed to qualify a farmer and lending institution for participation in an appropriate operating loan assistance program of an agency or instrumentality of the federal government, the authority may:

a. Enter into an agreement with the lending institution and the farmer to supplement the assistance to be received pursuant to the federal program in which agreement the lending institution shall agree to reduce for up to three years the interest rate on the farmer's operating loan to the rate determined by the authority to be necessary to qualify the farmer and lending institution for participation in the federal program and the farmer shall agree to comply with the rules and requirements established by the authority.

b. Agree to give the lending institution, for the benefit of the farmer, a grant in an amount to be determined by the authority to partially reimburse the lending institution for the reduction of the interest rate on the farmer's operating loan.

6. In determining the rate reduction to be required under subsection 5, paragraph "a", and the amount of the grant to be given under subsection 5, paragraph "b", the authority shall:

a. Consider the amount of any interest reimbursement to be received by the farmer or lending institution pursuant to the federal operating loan assistance program.

b. Not require a rate reduction pursuant to subsection 5, paragraph "a" which is in excess of three percentage points in addition to the interest rate reduction required pursuant to the federal program.

c. Not give a grant pursuant to subsection 5, paragraph "b" in an amount greater than three percent per annum of up to one hundred thousand dollars of the principal balance of the farmer's operating loan outstanding from time to time, for the term of the loan or for three years, whichever is less.

7. Notwithstanding the provisions of subsections 4, 5, and 6, upon approval of an eligibility application and a determination by the authority that operating loan assistance will not be available to an individual farmer and lending

institution on a timely basis pursuant to an appropriate program of the federal government, the authority may:

a. Enter into an agreement with the lending institution and the farmer in which the lending institution shall agree to reduce for up to three years the interest rate on the farmer's operating loan to a rate determined by the authority below the lending institution's farm operating loan rate as certified to the authority and the farmer shall agree to comply with the rules and requirements established by the authority.

b. Agree to give to the lending institution, for the benefit of the farmer, a grant in the amount, as determined by the authority, up to three percent per annum of up to one hundred thousand dollars of the principal balance of the farmer's operating loan outstanding from time to time, for the term of the loan or for three years, whichever is less, to partially reimburse the lending institution for the reduction of the interest rate on the borrower's operating loan. However, the grant shall not exceed fifty percent of the amount of interest foregone by the lending institution pursuant to the rate reduction under paragraph "a".

8. The authority may require a lending institution to submit evidence satisfactory to the authority that the lending institution has complied with the reduction in the interest rate as required by an agreement pursuant to subsection 5 or 7. The authority may inspect any books and records of a lending institution which are pertinent to the administration of the agricultural loan assistance program.

9. In order to assure compliance with this section and rules adopted pursuant to this section, the authority may establish by rule appropriate enforcement provisions, including but not limited to, the payment of civil penalties by a lending institution or farmer.

87 Acts, ch 169, §3 HF 626; 87 Acts, ch 127, §1-3 SF 146

Subsection 3, NEW paragraphs g and h

Subsection 5, paragraph a amended

Subsection 6, paragraph c amended

Subsection 7, paragraphs a and b amended

175.36 Assistance and management programs for beef cattle producers.

1. The authority shall create and develop programs to assist agricultural producers who have established or intend to establish in this state, beef cattle production operations, including but not limited to the following assistance:

a. *Insurance or loan guarantee program.* An insurance or loan guarantee program to provide for the insuring or guaranteeing of all or part of a loan made to an agricultural producer for the acquisition of beef cattle to establish or expand a feeder cattle operation.

b. *An interest buy-down program.* The authority may contract with a participating lending institution and a qualified agricultural producer to reduce the interest rate charged on a loan for the acquisition of beef cattle breeding stock. The authority shall determine the amount that the rate is reduced, by considering the lending institution's customary loan rate for the acquisition of beef cattle breeding stock as certified to the authority by the lending institution.

As part of the contract, in order to partially reimburse the lending institution for the reduction of the interest rate on the loan, the authority may agree to grant the lending institution any amount foregone by reducing the interest rate on that portion of the loan which is one hundred thousand dollars or less. However, the amount reimbursed shall not be more than the lesser of the following:

(1) Three percent per annum of the principal balance of the loan outstanding at any time for the term of the loan or within one year from the loan initiation date as defined by rules adopted by the authority, whichever is less.

(2) Fifty percent of the amount of interest foregone by the lending institution on the loan.

c. *A cost-sharing program.* The authority may contract with an agricultural producer to reimburse the producer for the cost of converting land planted to row

crops to pasture suitable for beef cattle production. However, the amount reimbursed shall not be more than twenty-five dollars per acre converted, or fifty percent of the conversion costs, whichever is less. The contract shall apply to not more than one hundred fifty acres of row crop land converted to pasture. The converted land shall be utilized in beef cattle production for a minimum of five years. The amount to be reimbursed shall be reduced by the amount that the agricultural producer receives under any other state or federal program that contributes toward the cost of converting the same land from row crops to pasture.

d. A management assistance and training program. The authority in cooperation with any agency or instrumentality of the federal government or with any state agency, including any state university or those associations organized for the purpose of assisting agricultural producers involved in beef cattle production, or with any farm management company if such company specializes in beef cattle production or in assisting beef cattle producers, as prescribed by rules adopted by the authority, shall establish programs to train and assist agricultural producers to effectively manage beef cattle production operations.

2. An agricultural producer shall be eligible to participate in a program established under this section only if all the following criteria are satisfied:

- a.* The agricultural producer is a resident of the state.
- b.* The agricultural producer has land or other facilities available to establish a beef cattle production operation as prescribed by rules of the authority.
- c.* The agricultural producer is an individual, partnership, or a family farm corporation, as defined in section 172C.1, subsection 8.
- d.* The land or other facilities available to establish a beef cattle production operation are located within the state.
- e.* The agricultural producer has a net worth of four hundred thousand dollars or less.

f. The agricultural producer develops a farm unit conservation plan, as defined in section 467A.42, with the commissioners of the soil and water conservation district where the land is located within one year from the date of entering into the program, unless the authority prescribes a shorter period of time by rule.

3. The authority shall adopt rules to enforce the provisions of this section or the terms of a contract to which the authority is a party. The authority may also enforce the provisions of this section or terms of the contract by bringing an action in any court of competent jurisdiction to recover damages. As a condition of entering into the program, the authority may require that the agricultural producer consent to the jurisdiction of the courts of this state to hear any matter arising from the provisions of this section.

87 Acts, ch 169, §4 HF 626
NEW section

CHAPTER 176A

COUNTY AGRICULTURAL EXTENSION LAW

176A.8 Powers and duties of county agricultural extension council.

The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually in January a chairperson, vice chairperson, secretary and a treasurer who shall serve and be the officers of the extension council for a term expiring December 31 each year, and perform the functions and duties as herein in this chapter provided.

2. To and shall each year at the meeting at which the date, time, and place of the holding of township election meetings is fixed and determined, appoint from their own number one member whose term does not expire as of December 31 following said meeting to act as temporary chairperson of the first meeting of the

extension council to be held in January following that member's appointment, and one to act as temporary secretary of said extension council meeting.

3. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

4. To and shall fix the date, time and place in each of the townships of the extension district for the holding of township election meetings during the period provided for the holding of them for the election of members of the extension council, and call the township election meetings in each of the townships of the extension district for the election of the members of the extension council and cause notice of the election to be published as provided in section 331.305 prior to the date fixed for the holding of the meetings in a newspaper having general circulation in each extension district, and the cost of publishing the notice shall be paid by the extension council. The township election meeting to elect a member of the extension council from the township may, by designation of the extension council, be held in another township of that county. However, the extension council shall not designate that over four of those township elections may be combined into one election. All the provisions of this chapter referring to township election meetings in the townships shall apply equally to the election meetings held at the other place in the county.

5. To and shall prior to the date of the holding of a township election meeting, designate two resident qualified voters in each of the several townships in which an election meeting is to be held, one to act as chairperson, one to act as secretary of said meeting, which said meeting shall be conducted in accordance with Robert's Rules of Order. The minutes of each township election meeting shall be recorded by the secretary, signed and certified by the chairperson and secretary and delivered by the secretary to the office of the extension council of the several extension districts on or before the date fixed for the next meeting of the extension council.

6. To and shall prior to the date fixed for the holding of the election meetings in the several townships of the district, appoint in each of the townships in which a township election meeting is to be held a nominating committee consisting of three members and designate the chairperson thereof, which nominating committee shall nominate at least two resident qualified voters as candidates for election to membership in the extension council, which committee shall certify the names of the nominees and deliver said certificate to the person designated as chairperson of the township election meeting on or before the date fixed for the holding thereof.

7. To enter into a Memorandum of Understanding with the extension service setting forth the co-operative relationship between the extension service and the extension district.

8. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in co-operation with the extension service and in accordance with the Memorandum of Understanding entered into with such extension service.

9. To prepare annually on or before January 31 a budget for the fiscal year beginning July 1 and ending the following June 30, in accordance with the provisions of chapter 24 and certify the same to the board of supervisors of the county of their extension district as required by law.

10. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H

club work, and periodically review said program and for the carrying out of the same in co-operation with the extension service in accordance with the Memorandum of Understanding with said extension service.

11. To make and adopt such rules not inconsistent with the law as it may deem necessary for its own government and the transaction of the business of the extension district.

12. To fill all vacancies in its membership to serve for the unexpired term of the member creating such vacancy by electing a resident qualified voter from the township of the residence of the member creating such vacancy. If for any reason a township election meeting is not held pursuant to call and published notice and no one is elected from said township as a member of the extension council of the district, there shall be a vacancy in such membership on the extension council.

13. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairperson and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

14. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairperson and secretary and approved by the extension council and recorded in its minutes.

15. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equipment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm co-operative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned or occupied by a farm organization or farm co-operative.

16. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received from taxes are collected by the county treasurer. However, the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from the fund in the previous year shall be paid over to the county treasurer. The treasurer of the extension council with the approval of the council may invest agricultural extension education funds retained by the council and not needed for current expenses in the manner authorized for treasurers of political subdivisions under section 453.1.

17. To file with the county auditor and to publish in two newspapers of general circulation in the district before August 1 full and detailed reports under oath of all receipts, from whatever source derived, and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year.

87 Acts, ch 43, §5 SF 265
Subsection 4 amended

CHAPTER 176B

LAND PRESERVATION AND USE

176B.3 County land preservation and use commissions established.

1. In each county a county land preservation and use commission is created composed of the following members:

a. One member appointed by and from the county agricultural extension council.

b. Two members appointed by the district soil and water conservation commissioners, one of whom must be a member of the district soil and water conservation board of commissioners and one must be a person who is not a commissioner, but is actively operating a farm in the county.

c. One member appointed by the board of supervisors from the residents of the county who may be a member of the board.

d. One member appointed by and from a convention of the mayors and councilpersons of the cities of the county. If a participating city contains fifty percent or more of the total population of the participating cities, that city may appoint the member appointed under this paragraph.

However, if a city contains more than fifty percent of the population of a county which has a population exceeding fifty thousand persons, that city shall not participate in the convention of mayors and councilpersons and the members appointed under paragraph "d" shall be one member appointed by and from the mayor and councilpersons of that city and one member appointed by and from the convention of mayors and councilpersons and the member appointed under paragraph "c" shall be a resident of the county engaged in actual farming operations appointed by the board of supervisors.

2. The county commission shall meet and organize by the election of a chairperson and vice chairperson from among its members by October 1, 1982. A majority of the members of the county commission constitutes a quorum. Concurrence of a quorum is required to determine any matter relating to its official duties.

3. The state agricultural extension service shall provide county commissions with technical, informational, and clerical assistance.

4. A vacancy in the county commission shall be filled in the same manner as the appointment of the member whose position is vacant. The term of a county commissioner is four years. However, in the initial appointments to the county commission, the members appointed under subsection 1, paragraphs "a" and "b" shall be appointed to terms of two years. Members may be appointed to succeed themselves.

87 Acts, ch 23, §6 SF 382
Subsection 1, paragraph b amended

CHAPTER 177

CROP IMPROVEMENT ASSOCIATION

177.2 Duties and objects of association.

The purposes and objectives of the Iowa crop improvement association shall be:

1. To encourage the use of good agricultural practices in crop production, including best management practices for applying fertilizer and pesticide, and to conserve, maintain, and improve soil productivity.

2. To encourage the production of high quality pure seed of varieties having proved adaptation and performance as determined by experimental trials.

3. To encourage the more widespread use of superior seeds by such means as may be designated by its members or board of directors.

4. To co-operate with the agricultural experiment station of the Iowa State University of science and technology in conducting tests to determine the adaptation and performance of crop hybrids, crop varieties, and new crops of potential value in Iowa.

5. Promote in such other ways as the association may deem advisable the objects as set out in this section.

6. Hold an annual meeting.

7. Submit an annual report of the proceedings, receipts and expenditures to the Iowa state secretary of agriculture.

87 Acts, ch 225, §204 HF 631
Subsection 1 amended

177.3 Board of directors.

The business of the association shall be transacted by a board of directors which shall consist of:

1. The director of the agricultural experiment station of the Iowa State University of science and technology.
2. The head of farm crops in the Iowa agricultural experiment station.
3. The secretary of agriculture or the secretary's designee.
4. Six persons who shall be elected from its membership.

87 Acts, ch 115, §30 SF 374
Subsection 3 amended

CHAPTER 178

STATE DAIRY ASSOCIATION

178.3 Executive committee.

The association shall conduct its business through an executive committee which shall consist of:

1. The president and the secretary of the association.
2. The dean of the college of agriculture of the Iowa State University of science and technology.
3. A member of the faculty of said university engaged in the teaching of dairying to be designated by said dean.
4. The secretary of agriculture or the secretary's designee.

87 Acts, ch 115, §31 SF 374
Subsection 4 amended

CHAPTER 186

STATE HORTICULTURAL SOCIETY

186.1 Meetings and organization of society.

The state horticultural society shall hold meetings each year, at times as it may fix, for the transaction of business. The officers and board of directors of the society shall be chosen as provided for in the constitution of the society, for the period and in the manner prescribed therein, but the secretary of agriculture or the secretary's designee shall be a member of the board of directors and of the executive committee. Any vacancy in the offices filled by the society may be filled by the executive committee for the unexpired portion of the term.

87 Acts, ch 115, §32 SF 374
Section amended

CHAPTER 189A

MEAT AND POULTRY INSPECTION

189A.5 Veterinarians and inspectors.

The secretary shall administer this chapter and may appoint a person to act as the secretary's designee in the administration of this chapter. The secretary shall employ veterinarians licensed in the state of Iowa as veterinary inspectors. The

secretary is also authorized to employ as meat inspectors other persons who have qualified and are skilled in the inspection of meat and poultry products and any other additional employees the secretary deems necessary to carry out the provisions of this chapter. The meat inspectors shall be under the supervision of the secretary's designee or a veterinary inspector if no designee is appointed. The secretary may also enter into contracts with qualified individuals to perform inspection services as the secretary may designate for a fee per head or per unit volume to be determined by the secretary provided the persons are not employed in an establishment in which the inspection takes place. The secretary may utilize any employee, agent, or equipment of the department in the enforcement of this chapter, and may assign to inspectors other duties related to the acceptance of meat and poultry products.

In order to accomplish the objectives stated in section 189A.3 the secretary shall:

1. By regulations require antemortem and postmortem inspections, quarantine, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in this state, except those exempted by section 189A.4, at which livestock or poultry are slaughtered or livestock or poultry products are prepared for human food solely for distribution in intrastate commerce.

2. By regulations require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Iowa Inspected and Passed" if the products are found upon inspection to be not adulterated, and as "Iowa Inspected and Condemned" if they are found upon inspection to be adulterated; and the destruction for food purposes of all such condemned products under the supervision of an inspector.

3. Prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit the entry of such articles and other materials into such establishments under such conditions as the secretary deems necessary to effectuate the purposes of this chapter.

4. By regulations require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, all information required by subsection 16 of section 189A.2; and require approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of this chapter.

5. Investigate the sanitary conditions of each establishment within subsection 1 of this section and withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat.

6. Prescribe regulations relating to sanitation for all establishments required to have inspection under subsection 1 of this section.

7. By regulations require that both of the following classes of persons shall keep such records and for such periods as are specified in the regulations to fully and correctly disclose all transactions involved in their business, and to afford the secretary and the secretary's representatives, including representatives of other governmental agencies designated by the secretary, access to such places of business, and opportunity at all reasonable times to examine the facilities, inventory, and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor:

a. Any person that engages in or for intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or

labeling, buying or selling, as a broker, wholesaler, or otherwise, transporting, or storing any livestock products or poultry products for human or animal food.

b. Any person that engages in or for intrastate commerce in business as a renderer or in the business of buying, selling, or transporting any dead, dying, disabled, or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died otherwise than by slaughter.

87 Acts, ch 144, §1 HF 602

Unnumbered paragraph 1 amended

CHAPTER 192A

MARKETING OF DAIRY PRODUCTS

192A.13 Gifts to retailers prohibited.

No processor or distributor shall give, offer to give, furnish, finance, or otherwise make available any free goods to any person, directly or indirectly, in connection with the sale of dairy products or to any other person doing business with such person, or give, offer to give, furnish, finance, or otherwise make available any payments, gifts, or grants of anything of value to any retailer. However, this section does not prevent the use in advertisements or otherwise of "cents-off" purchase price coupons or "refund" coupons or the redeeming of the coupons from a retailer, and does not prevent any of the following:

1. The furnishing of point of sale advertising material made of paper, cardboard, or other material not of a permanent nature for the use in the promotion of the products of such processor or distributor which remain inside retailer locations.

2. The furnishing of hostesses or demonstrators at any retailer's location to promote the products of the processor or distributor.

3. The advertising by a processor or distributor of products through any advertising media the processor or distributor selects which does not involve allowances, payments, or the furnishing of other property to persons purchasing such products in a manner prohibited by this section.

4. Advertising allowances which do no more than reimburse a retailer for costs in advertising dairy products of the processor or distributor.

87 Acts, ch 65, §4 SF 267

Section affirmed and reenacted effective April 29, 1987; legislative findings; 87 Acts, ch 65, §1, 4 SF 267

CHAPTER 200

FERTILIZERS AND SOIL CONDITIONERS

200.4 Licenses.

1. Any person who manufactures, mixes, blends, mixes to customers order, offers for sale, sells, or distributes any fertilizer or soil conditioner in Iowa must first obtain a license from the secretary of agriculture and shall pay a ten-dollar license fee for each place of manufacture or distribution from which fertilizer or soil conditioner products are sold or distributed in Iowa. Such license fee shall be paid annually on July 1 of each year.

2. Said licensee shall at all times produce an intimate and uniform mixture of fertilizers or soil conditioners. When two or more fertilizer materials are delivered

in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

87 Acts, ch 225, §205 HF 631
Section amended

200.8 Inspection fees.

1. There shall be paid by the licensee to the secretary for all commercial fertilizers and soil conditioners sold, or distributed in this state, an inspection fee to be fixed annually by the secretary of agriculture at not more than twenty cents per ton. Sales for manufacturing purposes only are hereby exempted from fees but must still be reported showing manufacturer who purchased same. Payment of said inspection fee by any licensee shall exempt all other persons, firms or corporations from the payment thereof.

On individual packages of specialty fertilizer containing twenty-five pounds or less, there shall be paid by the manufacturer in lieu of the semiannual inspection fee as set forth in this chapter, an annual registration and inspection fee of one hundred dollars for each brand and grade sold or distributed in the state. In the event that any manufacturer sells specialty fertilizer in packages of twenty-five pounds or less and also in packages of more than twenty-five pounds, this annual registration and inspection fee shall apply only to that portion sold in packages of twenty-five pounds or less, and that portion sold in packages of more than twenty-five pounds shall be subject to the same inspection fee as fixed by the secretary of agriculture as provided in this chapter.

Any person other than a manufacturer who offers for sale, sells, or distributes specialty fertilizer in packages of twenty-five pounds or less or applies specialty fertilizer for compensation shall be required to pay an annual inspection fee of fifty dollars in lieu of the semiannual inspection fee as set forth in this chapter.

2. Every licensee and any person required to pay an annual registration and inspection fee under this chapter in this state shall:

a. File not later than the last day of January and July of each year, on forms furnished by the secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil conditioners distributed in this state by grade for each county during the preceding six months' period; and upon filing such statement shall pay the inspection fee at the rate stated in subsection 1 of this section. However, in lieu of the semiannual statement by grade for each county, as hereinabove provided for, the registrant, on individual packages of specialty fertilizer containing twenty-five pounds or less, shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of net tons of specialty fertilizer distributed in this state by grade during the preceding twelve-month period.

b. If the tonnage report is not filed or the payment of inspection fees, or both, is not made within ten days after the last day of January and July of each year as required in paragraph "a" of this subsection, a penalty amounting to ten percent of the amount due, if any, shall be assessed against the licensee. In any case, the penalty shall be no less than fifty dollars. The amount of fees due, if any, and penalty shall constitute a debt and become the basis of a judgment against the licensee.

3. If there is an unencumbered balance of funds in the fertilizer fund on June 30 of any fiscal year equal to or exceeding three hundred fifty thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 and the annual license fee established pursuant to section 201.3 for the next fiscal year in such amount as will result in an ending estimated balance for June 30 of the next fiscal year of three hundred fifty thousand dollars.

4. In addition to the fees imposed under subsection 1, a groundwater protection fee shall be imposed upon nitrogen-based fertilizer. The fee shall be based upon the percentage of actual nitrogen contained in the product. An eighty-two percent nitrogen solution shall be taxed at a rate of seventy-five cents per ton. Other

nitrogen-based product formulations shall be taxed on the percentage of actual nitrogen contained in the formulations with the eighty-two percent nitrogen solution serving as the base. The fee shall be paid by each licensee registering to sell fertilizer to the secretary of agriculture. The fees collected shall be deposited in the agriculture management account of the groundwater protection fund. The secretary of agriculture shall adopt rules for the payment, filing, and collection of groundwater protection fees from licensees in conjunction with the collection of registration and inspection fees. The secretary shall, by rule allow an exemption to the payment of this fee for fertilizers which contain trace amounts of nitrogen.

87 Acts, ch 225, §206, 207 HF 631
Section amended
NEW subsection 4

200.9 Fertilizer fund.

Fees collected for licenses and inspection fees under sections 200.4 and 200.8, with the exception of those fees collected for deposit in the agriculture management account of the groundwater protection fund, shall be deposited in the treasury to the credit of the fertilizer fund to be used only by the department for the purpose of inspection, sampling, analysis, preparation, and publishing of reports and other expenses necessary for administration of this chapter. The secretary may assign moneys to the Iowa agricultural experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions for enforcement of this chapter.

87 Acts, ch 225, §208 HF 631
Section amended

CHAPTER 203A

IOWA DRUG AND COSMETIC ACT

203A.19 Information filed and placed on labels.

Any prescription drug, as defined in chapter 155A, is misbranded unless:

1. The label sets forth:

- a. The generic name of the drug, which shall be printed in a type size at least half as large as that used for the brand or trade name of the drug product; and
- b. The name and place of business of the actual manufacturer of the finished dosage form of the drug and if different, the name and place of business of the packer or distributor of the drug.

2. There has been filed with the board by the manufacturer packer or distributor of the drug a statement which is accurate with respect to the drug setting forth the information required by subsection 1 together with all additional information relating to demonstrated bioavailability, side effects, contraindications and effectiveness as may be required by rules of the board.

87 Acts, ch 215, §43 HF 594
Unnumbered paragraph 1 amended

CHAPTER 204

UNIFORM CONTROLLED SUBSTANCES (DRUGS)

204.204 Schedule I—substances included.

1. The controlled substances listed in this section are included in schedule I.
2. *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and

salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. Acetylmethadol.
- b. Allyprodine.
- c. Alphacetylmethadol.
- d. Alphameprodine.
- e. Alphamethadol.
- f. Alpha-Methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).
- g. Benzethidine.
- h. Betacetylmethadol.
- i. Betameprodine.
- j. Betamethadol.
- k. Betaprodine.
- l. Clonitazene.
- m. Dextromoramide.
- n. Difenoazin.
- a. Diampromide.
- p. Diethylthiambutene.
- q. Dimenoxadol.
- r. Dimepheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- u. Ethylmethylthiambutene.
- w. Etonitazene.
- x. Etozeridine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Ketobemidone.
- ab. Levomoramide.
- ac. Levophenacilmorphan.
- ad. Morpheridine.
- ae. Noracymethadol.
- af. Norlevorphanol.
- ag. Normethadone.
- ah. Norpipanone.
- ai. Phenadoxone.
- aj. Phenampromide.
- ak. Phenomorphan.
- al. Phenoperidine.
- am. Piritramide.
- an. Proheptazine.
- aa. Properidine.
- ap. Propiram.
- aq. Racemoramide.
- ar. Tilidine.
- as. Trimeperidine.

3. *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a. Acetorphine.
- b. Acetyldihydrocodeine.
- c. Benzylmorphine.
- d. Codeine methylbromide.

- e. Codeine-N-Oxide.
- f. Cyprenorphine.
- g. Desomorphine.
- h. Dihydromorphine.
- i. Etorphine (except hydrochloride salt).
- j. Heroin.
- k. Hydromorphenol.
- l. Methyldesorphine.
- m. Methyldihydromorphine.
- n. Morphine methylbromide.
- o. Morphine methylsulfonate.
- p. Morphine-N-Oxide.
- q. Myrophine.
- r. Nicocodeine.
- s. Nicomorphine.
- t. Normorphine.
- u. Phoclodine.
- v. Thebacon.
- w. Drotebanol.

4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- a. 4-bromo-2,5-dimethoxy-amphetamine. Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.
- b. 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.
- c. 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.
- d. 5-methoxy-3,4-methylenedioxy-amphetamine.
- e. 4-methyl-2,5-dimethoxyl-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP".
- f. 3,4-methylenedioxy amphetamine, also known as MDA.
- g. 3,4,5-trimethoxy amphetamine.
- h. Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.
- i. Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.
- j. Dimethyltryptamine. Some trade or other names: DMT.
- k. Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga.
- l. Lysergic acid diethylamide.
- m. Marijuana, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.
- n. Mescaline.
- o. Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d) pyran; synhexyl.
- p. Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant,

and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.

q. N-ethyl-3-piperidyl benzilate.
 r. N-methyl-3-piperidyl benzilate.
 s. Psilocybin.
 t. Psilocyn.
 u. Tetrahydrocannabinols, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis sp., and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: 1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States food and drug administration. 6 cis or trans tetrahydrocannabinol, and their optical isomers. 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

u. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

w. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

x. Thiophene analog of phencyclidine. Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

5. *Depressants*. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Mecloqualone.

b. Methaqualone.

6. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Fenethylamine.

b. N-ethylamphetamine.

7. *Exclusions*. This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the state board of pharmacy examiners.

8. *Peyote*. Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

9. *Other materials*. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. 3-methylfentanyl (N-[3-methyl-1-]2-phenylethyl)-4-piperidyl)-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers.

b. 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers.

c. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers.

d. 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers.

e. N-[1-(1-methyl-2-phenyl)ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers.

f. N-[1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (alpha-methylthiofentanyl), its optical isomers, salts, and salts of isomers.

g. N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (denzylfentanyl), its optical isomers, salts and salts of isomers.

h. N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers.

i. N-[3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers.

j. N-[3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers.

k. N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide(thenylfentanyl), its optical isomers, salts and salts of isomers.

l. N-[1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (thiofentanyl), its optical isomers, salts and salts of isomers.

m. N-[1-(2-phenylethyl)-4-piperidyl] N-(4-fluorophenyl)-propanamide (para-fluorofentanyl), its optical isomers, salts, and salts of isomers.

87 Acts, ch 122, §1 HF 492
Subsection 9, NEW paragraph m

204.206 Schedule II—substances included.

1. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Substances, vegetable origin or chemical synthesis.* Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, nalmeferne, naloxone, and naltrexone, and their respective salts, but including the following:

- (1) Raw opium.
- (2) Opium extracts.
- (3) Opium fluid extracts.
- (4) Powdered opium.
- (5) Granulated opium.
- (6) Tincture of opium.
- (7) Codeine.
- (8) Ethylmorphine.
- (9) Etorphine hydrochloride.
- (10) Hydrocodone, also known as dihydrocodeinone.
- (11) Hydromorphone, also known as dihydromorphinone.
- (12) Metopon.
- (13) Morphine.
- (14) Oxycodone.
- (15) Oxymorphone.
- (16) Thebaine.

b. Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph "a", subparagraph (1), except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and their salts, isomers and salts of isomers, if salts, isomers or salts of isomers exist under the specific chemical designation, are included in this paragraph:

- (1) Cocaine.
- (2) Ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

3. *Opiates*. Unless specifically excepted or unless listed in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

- a. Alphaprodine.
- b. Alfentanil.
- c. Anileridine.
- d. Bezitramide.
- e. Bulk dextropropoxyphene (nondosage forms).
- f. Dihydrocodeine.
- g. Diphenoxylate.
- h. Fentanyl.
- i. Isomethadone.
- j. Levomethorphan.
- k. Levorphanol.
- l. Metazocine.
- m. Methadone.
- n. Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
- o. Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
- p. Pethidine (meperidine).
- q. Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- r. Pethidine-intermediate-B, ethyl-4-phenylpiperidine-carboxylate.
- s. Pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- t. Phenazocine.
- u. Piminodine.
- v. Racemethorphan.
- w. Racemorphan.
- x. Sufentanil.

4. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, isomers, and salts of its isomers.
- b. Methamphetamine, its salts, isomers, and salts of its isomers.
- c. Phenmetrazine and its salts.
- d. Methylphenidate and its salts.

5. *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Amobarbital.

- b. Pentobarbital.
- c. Phencyclidine.
- d. Secobarbital.

6. *Immediate precursors.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. Immediate precursor to amphetamine and methamphetamine:

(1) Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

b. Immediate precursors to phencyclidine (PCP):

(1) 1-phenylcyclohexylamine.

(2) 1-piperidinocyclohexanecarbonitrile (PCC).

7. *Hallucinogenic substances.* Marijuana is deemed to be a schedule II substance when used for medicinal purposes pursuant to rules of the board of pharmacy examiners. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. [Some other names for dronabinol (6aR trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzol [b,d]pyran-1-ol or (-) delta 9-(trans)-tetrahydrocannabinol.]

8. The board of pharmacy examiners, by rule, may except any compound, mixture, or preparation containing any stimulant listed in subsection 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system, and if the admixtures are included in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

87Acts, ch 122, §2 HF 492

Subsection 3, NEW paragraph b and former paragraphs b-w relettered as c-x

204.210 Schedule IV—substances included.

1. The controlled substances listed in this section are included in schedule IV.

2. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

a. Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

b. Dextropropoxyphene (alpha-(+)-4-dimethylamindiphenyl-3-methyl-2-propionoxybutane).

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Alprazolam.
- b. Barbital.
- c. Bromazepam.
- d. Camazepam.
- e. Chloral betaine.
- f. Chloral hydrate.
- g. Chlordiazepoxide.
- h. Clobazam.
- i. Clonazepam.
- j. Clorazepate.
- k. Clotiazepam.
- l. Cloxazolam.

<i>m.</i>	Delorazepam.
<i>n.</i>	Diazepam.
<i>a</i>	Estazolam.
<i>p</i>	Ethchlorvynol.
<i>q.</i>	Ethinamate.
<i>r.</i>	Ethyl Loflazepate.
<i>s.</i>	Fludiazepam.
<i>t.</i>	Flunitrazepam.
<i>u.</i>	Flurazepam.
<i>u</i>	Halazepam.
<i>u.</i>	Haloxazolam.
<i>x.</i>	Ketazolam.
<i>y.</i>	Loprazolam.
<i>z.</i>	Lorazepam.
<i>aa.</i>	Lormetazepam.
<i>ab.</i>	Mebutamate.
<i>ac.</i>	Medazepam.
<i>ad.</i>	Meprobamate.
<i>ae.</i>	Methohexital.
<i>af.</i>	Methylphenobarbital (mephobarbital).
<i>ag.</i>	Nimetazepam.
<i>ah.</i>	Nitrazepam.
<i>ai.</i>	Nordiazepam.
<i>aj.</i>	Oxazepam.
<i>ak.</i>	Oxazolam.
<i>al.</i>	Paraldehyde.
<i>am.</i>	Petrichloral.
<i>an.</i>	Phenobarbital.
<i>aa</i>	Prazepam.
<i>ap</i>	Pinazepam.
<i>aq.</i>	Temazepam.
<i>ar.</i>	Tetrazepam.
<i>as.</i>	Triazolam.
<i>at.</i>	Midazolam.
<i>au.</i>	Quazepam.

4. *Fenfluramine*. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

a. Fenfluramine.

5. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

a. Diethylpropion.

b. Mazindol.

c. Pemoline (including organometallic complexes and chelates thereof).

d. Phentermine.

e. Pipradrol.

f. SPA ((-)-1-dimethylamino-1,2-diphenylethane).

6. *Other substances*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

a. Pentazocine.

87 Acts, ch 122, §3 HF 492
Subsection 3, NEW paragraphs at and au

204.308 Prescriptions.

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 204.306. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under chapter 155A, shall not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

4. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

87 Acts, ch 215, §44 HF 594
Subsection 3 amended

CHAPTER 206

PESTICIDES

206.2 Definitions.

When used in this chapter:

1. The term "*pesticide*" shall mean (a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary shall declare to be a pest, and (b) any substances intended for use as a plant growth regulator, defoliant or desiccant.

2. The term "*device*" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects, birds, or rodents or destroying, repelling, or mitigating fungi, nematodes, weeds or such other pests as may be designated by the secretary, but not including equipment used for the application of pesticides when sold separately therefrom.

3. The term "*plant growth regulator*" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

4. The term "*ingredient statement*" means either:

a. A statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide.

b. When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

5. The term "*active ingredient*" means:

a. In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

b. In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

6. The term "*inert ingredient*" means an ingredient which is not an active ingredient.

7. The term "*antidote*" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

8. The term "*person*" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

9. Reserved.

10. Reserved.

11. The term "*registrant*" means the person registering any pesticide or device or who has obtained a certificate of license from the department pursuant to the provisions of this chapter.

12. "*Commercial applicator*" means any person, corporation, or employee of a person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying any pesticide or servicing any device but shall not include a farmer trading work with another, a person employed by a farmer not solely as a pesticide applicator who applies pesticide as an incidental part of the person's general duties, or a person who applies pesticide as an incidental part of a custom farming operation.

13. The term "*label*" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

14. The term "*labeling*" means all labels and other written, printed or graphic matter:

a. Upon the pesticide or device or any of its containers or wrappers.

b. Accompanying the pesticide or device at any time.

c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, the state agricultural experiment stations, the Iowa State University, the Iowa department of public health, the department of natural resources, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

15. The term "*adulterated*" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

16. The term "*misbranded*" shall apply:

a. To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

b. To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide.

(2) If its labeling bears any reference to registration under this chapter, when not so registered.

(3) If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public.

(4) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living persons and other vertebrate animals.

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is to be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living persons or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(8) If in the case of a plant growth regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant growth regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

17. "*Certified applicator*" means any individual who is certified under this chapter as authorized to use any pesticide.

18. "*Certified private applicator*" means a certified applicator who uses any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

19. "*Certified commercial applicator*" means a pesticide applicator or individual who applies or uses a pesticide or device on any property of another for compensation.

20. "*Public applicator*" means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency. This term does not include employees who work only under the direct supervision of a public applicator.

21. The term "*distribute*" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

22. The term "*hazard*" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

23. The term "*permit*" means a written certificate, issued by the secretary or the secretary's agent under rules adopted by the department authorizing the use of certain state restricted use pesticides.

24. The term "*pesticide dealer*" means any person who distributes restricted use pesticides; pesticide for use by commercial or public pesticide applicators; or

general use pesticides labeled for agricultural or lawn and garden use with the exception of dealers whose gross annual pesticide sales are less than ten thousand dollars for each business location owned or operated by the dealer.

25. The term "*restricted use pesticide*" means any pesticide restricted as to use by rule of the secretary as adopted under section 206.20.

26. "*State restricted use pesticide*" means a pesticide which is restricted for sale, use, or distribution under section 455B.491.

27. The term "*under the direct supervision of*" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator or a state licensed commercial applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

28. The term "*unreasonable adverse effects on the environment*" means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

29. "*Chlordane*" means 1,2,4,5,6,7,8,8-octachloro-4,7-methano-3a,4,7,7a-tetrahydroindane; Octa klor: 1068; Velsicol 1068; Dowklor.

87 Acts, ch 225, §209-213 HF 631; 87 Acts, ch 177, §1 SF 479
Subsections 12, 17, 18, 19, and 24 amended
NEW subsection 29

206.5 Certification requirements.

A commercial or public applicator shall not apply any pesticide and a person shall not apply any restricted use pesticide without first complying with the certification requirements of this chapter and such other restrictions as determined by the secretary.

The secretary shall adopt, by rule, requirements for the examination, re-examination and certification of applicants.

Commercial and public applicators shall choose between one-year certification for which the applicator shall pay a twenty-five dollar fee or three-year certification for which the applicator shall pay a seventy-five dollar fee. Public applicators who are employed by a state agency shall be exempt from the twenty-five and seventy-five dollar certification fees and instead be subject to a five-dollar annual certification fee or a fifteen dollar fee for a three-year certification. The commercial or public applicator shall be tested prior to certification annually, if the applicator chooses a one-year certification or each three years if the applicator chooses three-year certification. A private applicator shall be tested prior to initial certification. The test shall include, but is not limited to, the area of safe handling of agricultural chemicals and the effects of these chemicals on groundwater. A person employed by a farmer not solely as a pesticide applicator who applies restricted use pesticides as an incidental part of the person's general duties or a person who applies restricted use pesticides as an incidental part of a custom farming operation is required to meet the certification requirements of a private applicator.

The secretary may adopt rules to provide for license and certification adjustments, including fees, which may be necessary to provide for an equitable transition for licenses and certifications issued prior to January 1, 1989. The rules shall also include a provision for renewal of certification through the administering of an approved exam, and a provision for a thirty-day renewal grace period.

87 Acts, ch 225, §214 HF 631
Section amended

206.6 License for commercial applicators.

1. *Commercial applicator*: No person shall engage in the business of applying pesticides to the lands or property of another at any time without being licensed by the secretary. The secretary shall require an annual license fee of not more than twenty-five dollars for each license. Application for a license shall be made in writing to the department on a designated form obtained from the department.

Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications for which the applicant is applying.

A person who applies pesticides by use of an aircraft and who is licensed as an aerial commercial applicator in another state shall apply pesticides in Iowa only under the direct supervision of a person holding a valid Iowa aerial commercial applicator's license. The supervising aerial commercial applicator is jointly liable with the person who is licensed as an aerial commercial applicator in another state for damages. The supervising applicator shall immediately notify the secretary of the commencement and of the termination of service provided by the supervised applicator. However, a person licensed in another state as an aerial commercial applicator may operate independently if the person acquires an aerial commercial applicator license from the secretary, posts bond in an amount to be determined by the secretary, and registers with the department of transportation. The person is liable for damages.

2. *Nonresident applicator.* Any nonresident applying for a license under this chapter to operate in the state shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicants. A nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The secretary shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be certified by the secretary of state.

3. *Examination for commercial applicator license.* The secretary of agriculture shall not issue a commercial applicator license until the individual engaged in or managing the pesticide application business and employed by the business to apply pesticides is certified by passing an examination to demonstrate to the secretary the individual's knowledge of how to apply pesticides under the classifications the individual has applied for, and the individual's knowledge of the nature and effect of pesticides the individual may apply under such classifications. The applicant successfully completing the certification requirement shall be a licensed commercial applicator.

4. *Renewal of applicant's license.* The secretary of agriculture shall renew any applicant's license under the classifications for which such applicant is licensed, provided that all of the applicant's personnel who apply pesticides are certified commercial applicators.

5. *Issue commercial applicator license.* If the secretary finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied and if the applicant files the bonds or insurance required under section 206.13, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the federal aviation administration, the department of transportation, and any other applicable federal or state laws or regulations to operate the equipment described in the application, the secretary shall issue a commercial applicator license limited to the classifications for which the applicant is qualified, which shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the secretary for cause. The secretary may limit the license of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons.

6. *Public applicator.*

a. All state agencies, counties, municipal corporations, and any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application of pesticides.

b. Public applicators for agencies listed in this subsection shall be subject to certification requirements as provided for in this section. The public applicator license shall be valid only when such applicator is acting as an applicator applying pesticides used by such entities. Government research personnel shall be exempt from this licensing requirement when applying pesticides only to experimental plots. Public agencies or municipal corporations licensed pursuant to this section shall be licensed public applicators.

c. Such agencies and municipal corporations shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred.

87 Acts, ch 225, §215-217 HF 631
Subsections 3 and 4 amended
Subsection 6, paragraph b amended

206.7 Certified applicators.

1. *Requirement for certification.* A commercial or public applicator shall not apply any pesticide without first complying with the certification standards.

2. *Certification standards.* Certification standards shall be adopted by the secretary to determine the individual's competence with respect to the application and handling of the restricted use pesticides. In determining these standards, the secretary shall take into consideration the standards of the United States environmental protection agency.

3. *Reasons for not qualifying.* If the secretary does not qualify the applicator under this section the secretary shall inform the applicant in writing of the reasons therefor.

87 Acts, ch 225, §218 HF 631
Subsection 1 amended

206.8 Pesticide dealer license.

1. It shall be unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained a license from the secretary which shall expire at the end of the calendar year of issue. A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for the manufacturer's, registrant's, or distributor's principal out-of-state location or outlet.

2. A pesticide dealer shall pay a minimum annual license fee of twenty-five dollars or an annual license fee based on one-tenth of one percent of the gross retail sales of all pesticides sold by the pesticide dealer in the previous year. The annual license fee shall be paid to the department of agriculture and land stewardship, beginning July 1, 1988, and July 1 of each year thereafter. A licensee shall pay a fee of twenty-five dollars for the period July 1, 1987 through June 30, 1988.

The initial twenty-five dollars of each annual license fee shall be retained by the department for administration of the program, and the remaining moneys collected shall be deposited in the agriculture management account of the groundwater protection fund.

3. Provisions of this section shall apply to a pesticide applicator who sells pesticides as an integral part of the applicator's pesticide application service, or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

4. Application for a license required for manufacturers and distributors who are not engaged in the retail sale of pesticides shall be accompanied by a

twenty-five dollar fee for each business location within the state required to be licensed, and shall be on a form prescribed by the secretary.

87 Acts, ch 225, §219, 220 HF 631
 Transition rules may be adopted; 87 Acts, ch 225, §233 HF 631
 Subsections 2 and 3 amended
 NEW subsection 4

206.9 Co-operative agreements.

The secretary may co-operate, receive grants-in-aid and enter into agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, or trade associations to obtain assistance in the implementation of this chapter and to do all of the following:

1. Secure uniformity of regulations.
2. Co-operate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement co-operative enforcement programs.
3. Contract for monitoring pesticides for the national plan.
4. Prepare and submit state plans to meet federal certification standards.
5. Regulate certified applicators.
6. Develop, in conjunction with the Iowa cooperative extension service in agriculture and home economics, courses available to the public regarding pesticide best management practices.

87 Acts, ch 225, §221 HF 631
 Section amended

206.12 Registration.

1. Every pesticide which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce between points within the state through any point outside this state shall be registered with the department of agriculture and land stewardship. All registration of products shall expire on the thirty-first day of December following date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated; provided that:

a. For the purpose of this chapter, fertilizers in mixed fertilizer-pesticide formulations shall be considered as inert ingredients.

b. Within the discretion of the secretary, or the secretary's authorized representative, a change in the labeling or formulae of a pesticide may be made within the current period of registration, without requiring a reregistration of the product, provided the name of the item is not changed.

2. The registrant shall file with the department a statement containing:

a. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.

b. The name of the pesticide.

c. An ingredient statement in which the accepted common name and percentage by weight of each active ingredient is listed as well as the percentage of inert ingredients in the pesticides.

d. A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use.

e. A full description of the tests made and results thereof upon which the claims are based, if requested by the secretary. In the case of renewal or reregistration, a statement may be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

3. The registrant, before selling or offering for sale any pesticide in this state, shall register each brand and grade of such pesticide with the secretary upon forms furnished by the secretary, and the secretary shall set the registration fee annually at one-fifth of one percent of gross sales within this state with a

minimum fee of two hundred fifty dollars and a maximum fee of three thousand dollars for each and every brand and grade to be offered for sale in this state. The secretary shall adopt by rule exemptions to the minimum fee. Fifty dollars of each fee collected shall be deposited in the treasury to the credit of the pesticide fund to be used only for the purpose of enforcing the provisions of this chapter and the remainder of each fee collected shall be placed in the agriculture management account of the groundwater protection fund.

4. The secretary, whenever the secretary deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this chapter, the secretary shall register the article.

5. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, the secretary shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

6. Notwithstanding any other provisions of this chapter, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

7. Each licensee under section 206.6 or 206.8 shall file an annual report with the secretary of agriculture listing the amount and type of all pesticides sold, offered for sale, or distributed at retail for use in this state, or applied in this state during each month of the previous year. This report shall be filed at the time of payment for licensure or annually on or before July 1. The secretary, by rule, may specify the form of the report and require additional information deemed necessary to determine pesticide use within the state. The information required shall include the brand names and amounts of pesticides sold, offered for sale, or distributed at retail for use in this state for each business location owned or operated by the retailer, but the information collected, if made public, shall be reported in a manner which does not identify a specific brand name in the report.

87 Acts, ch 225, §222, 223 HF 631
 Subsection 3 amended
 NEW subsection 7

206.19 Rules.

The department shall, by rule, after public hearing following due notice:

1. Declare as a pest any form of plant or animal life or virus which is unduly injurious to plants, humans, domestic animals, articles, or substances.
2. a. Determine the proper use of pesticides including but not limited to their formulations, times and methods of application, and other conditions of use.
 - b. With regard to the use of chlordane, the rules shall prohibit the use of chlordane injected into the ground around a home for any of the following:
 - (1) Homes built on concrete slabs with ventilation ducts in or below the slabs.
 - (2) Homes that have a gap between the bottom of the house and the ground.
 - (3) Homes with unfinished half-basements and crawl spaces.
 - (4) Homes which provide foundation drainage directly into sanitary sewers.

However, the rules may allow the use of chlordane in homes included in subparagraphs (1) through (3) if the homes have a termite infestation and the applicator informs the home's residents of the potential hazards of the chlordane's use and explains methods of abating chlordane contamination.

3. Determine in cooperation with municipalities, the proper notice to be given by a commercial or public applicator to occupants of adjoining properties in urban areas prior to or after the exterior application of pesticides, establish a schedule to determine the periods of application least harmful to living beings, and adopt

rules to implement these provisions. Municipalities shall cooperate with the department by reporting infractions and in implementing this subsection.

4. Adopt rules providing guidelines for public bodies to notify adjacent property occupants regarding the application of herbicides to noxious weeds or other undesirable vegetation within highway rights-of-way.

5. Establish civil penalties for violations by commercial applicators.

87 Acts, ch 177, §2 SF 479; 87 Acts, ch 225, §224 HF 631
Chlordane advisory committee to report January 1, 1988; 87 Acts, ch 177, §5 SF 479
Subsection 2 amended
NEW subsections 3-5

206.20 Restricted use pesticides classified.

The secretary shall determine, by rule, the pesticides to be classified as restricted use pesticides. In determining these rules the secretary shall take into consideration the pesticides classified as restricted use by the United States environmental protection agency and is authorized to adopt by reference these classifications.

Chlordane is classified as a restricted use pesticide.

87 Acts, ch 177, §3 SF 479
NEW unnumbered paragraph 2

206.21 Secretary of agriculture—duties.

1. The secretary is authorized, after public hearing following due notice, to make appropriate rules for carrying out the provisions of this chapter, including rules providing for the collection and chemical examination of samples of pesticides or devices.

2. For the purpose of carrying out the provisions and the requirements of this chapter and the rules made and notices given pursuant thereto, the secretary or the secretary's authorized agents, inspectors, or employees may enter into or upon any place during reasonable business hours in order to take periodic random samples for chemical examinations of pesticides and devices and to open any bundle, package or other container containing or believed to contain a pesticide in order to determine whether the pesticide or device complies with the requirements of this chapter. Methods of analysis shall be those currently used by the Association of Official Agricultural Chemists.

3. The secretary of agriculture, in cooperation with the advisory committee created pursuant to section 206.23, shall designate areas with a history of concerns regarding nearby pesticide applications as pesticide management areas. The secretary shall adopt rules for designating pesticide management areas.

87 Acts, ch 225, §225 HF 631
NEW subsection 3

206.24 Agricultural initiative.

A program of education and demonstration in the area of the agricultural use of fertilizers and pesticides shall be initiated by the secretary of agriculture on July 1, 1987. The secretary shall coordinate the activities of the state regarding this program.

Education and demonstration programs shall promote the widespread adoption of management practices which protect groundwater. The programs may include but are not limited to programs targeted toward the individual farm owner or operator, high school and college students, and groundwater users, in the areas of best management practices, current research findings, and health impacts. Emphasis shall be given to programs which enable these persons to demonstrate best management practices to their peers.

87 Acts, ch 225, §226 HF 631
NEW section

206.25 Pesticide containers disposal.

The department of agriculture and land stewardship, in cooperation with the environmental protection division of the department of natural resources, shall

develop a program for handling used pesticide containers which reflects the state solid waste management policy hierarchy, and shall present the program developed to the general assembly by February 1, 1988.

87 Acts, ch 225, §227 HF 631
NEW section

206.26 through 206.30 Reserved.

206.31 Application of pesticides in and about the home.

1. *Definitions.* Notwithstanding section 206.2, as used in this chapter with regard to the application of pesticides used inside the home or injected into the ground around the home:

a. "*Commercial applicator*" means a person, or employee of a person, who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide or servicing a device but shall not include a farmer trading work with another.

b. "*Public applicator*" means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency.

2. *Additional certification requirements.* A person shall not apply a restricted use pesticide inside a home or injected into the ground around a home without first complying with the certification requirements of this chapter and other restrictions as determined by the secretary.

The secretary shall require applicants for certification as commercial or public applicators of pesticides applied inside a home or injected into the ground around a home to take and pass a written test.

3. *Examination for commercial applicator license.* The secretary of agriculture shall not issue a commercial applicator license for applying pesticides inside homes or injecting pesticides into ground surrounding homes until the individual engaged in or managing the pesticide application business or employed by the business is certified by passing an examination to demonstrate to the secretary the individual's knowledge of how to apply pesticides under the classifications the individual has applied for, and the individual's knowledge of the nature and effect of pesticides the individual may apply under such classifications.

4. *Renewal of applicant's license.* The secretary of agriculture shall renew an applicant's license for applying pesticides inside homes or injecting pesticides into ground surrounding homes under the classifications for which the applicant is licensed, provided that all of the applicant's personnel who apply pesticides inside homes or inject pesticides into ground surrounding homes have also been certified.

5. *Certification of home chlordane applicator.* An individual may be certified by the secretary as a home chlordane applicator for authorization to use chlordane inside the individual's home or injected into the ground around the individual's home pursuant to the requirements of this chapter. The applicant for such certification shall be required to attend an approved informational course providing instruction on the correct use of chlordane and its hazards. The course shall be approved by the secretary and shall be at least three hours in length. In addition, the applicant shall be required to take and pass a written test on the uses and hazards of chlordane and pay a fee for the certification.

The secretary shall adopt by rule, pursuant to chapter 17A, requirements for the examination and certification of the applicants and set a fee of not more than five dollars for certification.

The secretary may adopt rules for the training of home chlordane applicators in cooperation with the cooperative extension service at Iowa State University of science and technology.

87 Acts, ch 177, §4 SF 479
Chlordane advisory committee to report January 1, 1988; 87 Acts, ch 177, §5 SF 479
NEW section

CHAPTER 214

PUBLIC SCALES AND MOTOR VEHICLE FUEL PUMPS

214.1 Definitions.

For the purpose of this chapter:

1. "*Public scale*" shall mean any scale or weighing device for the use of which a charge is made or compensation is derived.
2. "*Motor vehicle fuel pump*" means a pump, meter, or similar measuring device used for measuring motor vehicle fuel.
3. "*Motor vehicle fuel*" means a substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running by combustion any internal combustion engine and is kept for sale or sold for that purpose.

87 Acts, ch 93, §1, 2 SF 70
Subsection 2 amended
NEW subsection 3

214.2 License.

Every person who uses or displays for use any public scale, pump, or meter used in measuring the quantity of motor vehicle fuel or fuel oil sold to consumer customers shall secure a license for the scale, pump, or meter from the department.

87 Acts, ch 93, §3 SF 70
Section amended

214.3 Fee.

The license for a public scale shall expire on December 31 of each year, and for a motor vehicle fuel pump or meter on June 30 of each year.

The fee for each license shall be four dollars per annum, except that the fee for motor vehicle fuel pumps and meters shall be two dollars per annum if paid within one month from the date the license fee is due.

A license fee on every motor vehicle fuel pump and meter is due the day the pump or meter is placed in operation.

87 Acts, ch 93, §4 SF 70
Section amended

214.4 Form of license. Repealed by 87 Acts, ch 93, §8. SF 70 See §214.5.

214.5 Inspection stickers.

For each scale, pump, or meter licensed, the department shall issue an inspection sticker, which shall not exceed two inches by two inches in size. The inspection sticker shall be displayed prominently on the front of the scale, pump or meter, and the defacing or wrongful removal of the sticker shall be punished as provided in chapter 189. Absence of an inspection sticker is prima facie evidence that the scale, pump, or meter is being operated contrary to law.

87 Acts, ch 93, §5 SF 70
Section amended

214.9 Self-service motor vehicle fuel pumps.

Self-service motor vehicle fuel pumps at motor vehicle fuel stations may be equipped with automatic latch-open devices on the fuel dispensing hose nozzle only if the nozzle valve is the automatic closing type.

87 Acts, ch 93, §6 SF 70
Section amended

214.11 Inspections—recalibrations—penalty.

The department of agriculture and land stewardship shall provide for annual

inspections of all motor vehicle fuel pumps licensed under this chapter. Inspections shall be for the purpose of determining the accuracy of the pumps' measuring mechanisms, and for such purpose the department's inspectors may enter upon the premises of any wholesale dealer or retail dealer, as they are defined in section 214A.1, of motor vehicle fuel or fuel oil within this state. Upon completion of an inspection, the inspector shall affix the department's seal to the measuring mechanism of the pump. The seal shall be appropriately marked, dated, and recorded by the inspector. If the owner of an inspected and sealed pump is registered with the department as a servicer in accordance with section 215.23, or employs a person so registered as a servicer, the owner or other servicer may open the pump, break the department's seal, recalibrate the measuring mechanism if necessary, and reseal the pump as long as the department is notified of the recalibration within forty-eight hours, on a form provided by the department. A person violating a provision of this section is, upon conviction, guilty of a simple misdemeanor.

87 Acts, ch 93, §7 SF 70
NEW section

CHAPTER 217

DEPARTMENT OF HUMAN SERVICES

Adolescent pregnancy prevention and services grants; two-year pilot program; 87 Acts, ch 233, §431; 87 Acts, ch 234, §203 (1X)

CHAPTER 220

IOWA FINANCE AUTHORITY

220.1 Definitions.

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

1. "Authority" means the Iowa finance authority established in section 220.2.
2. "Low or moderate income families" means families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use, and also includes, but is not limited to, (1) elderly families, families in which one or more persons are handicapped or disabled, lower income families and very low income families, and (2) families purchasing or renting qualified residential housing.
3. "Lower income families" means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area, and includes, but is not limited to, very low income families.
4. "Very low income families" means families whose incomes do not exceed fifty percent of the median income for the area, with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.
5. "Elderly families" means families of low or moderate income where the head of the household or the head's spouse is at least sixty-two years of age or older, or the surviving member of any such tenant family.
6. a. "Families" includes but is not limited to families consisting of a single adult person who is primarily responsible for the person's own support, is at least sixty-two years of age, is disabled, is handicapped, is displaced, or is the remaining member of a tenant family.
- b. "Families" includes but is not limited to two or more persons living together who are at least sixty-two years of age, are disabled, or are handicapped, or one or

more such individuals living with another person who is essential to such individual's care or well-being.

7. "*Disabled*" means unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment.

8. "*Handicapped*" means having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

9. "*Displaced*" means displaced by governmental action, or by having one's dwelling extensively damaged or destroyed as a result of a disaster.

10. "*Income*" means income from all sources of each member of the household, with appropriate exceptions and exemptions reasonably related to an equitable determination of the family's available income, as established by rule of the authority.

11. a. "*Housing*" means single family and multifamily dwellings, and facilities incidental or appurtenant to the dwellings, and includes group homes of fifteen beds or less licensed as health care facilities or child foster care facilities and modular or mobile homes which are permanently affixed to a foundation and are assessed as realty.

b. "*Adequate housing*" means housing which meets minimum structural, heating, lighting, ventilation, sanitary, occupancy and maintenance standards compatible with applicable building and housing codes, as determined under rules of the authority.

12. "*Health care facilities*" means those facilities referred to in section 135C.1, subsection 4, which contain fifteen beds or less.

13. "*Mortgage*" means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions acceptable to the authority, on a fee interest in real property which includes completed housing located within this state, or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds by not less than ten years the maturity date of the mortgage loan.

14. "*Mortgage lender*" means any bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any governmental agency, or any other financial institution authorized to make mortgage loans in this state and includes a financial institution as defined in section 496B.2, subsection 2, which lends moneys for industrial or business purposes.

15. "*Mortgage loan*" means a financial obligation secured by a mortgage.

16. "*Bond*" means a bond issued by the authority pursuant to sections 220.26 to 220.30.

17. "*Note*" means a bond anticipation note or a housing development fund note issued by the authority pursuant to this chapter.

18. "*State agency*" means any board, commission, department, public officer, or other agency of the state of Iowa.

19. "*Housing program*" means any work or undertaking of new construction or rehabilitation of one or more housing units, or the acquisition of existing residential structures, for the provision of housing, which is financed pursuant to the provisions of this chapter for the primary purpose of providing housing for low or moderate income families. A housing program may include housing for other economic groups as part of an overall plan to develop new or rehabilitated communities or neighborhoods, where housing low or moderate income families is a primary goal. A housing program may include any buildings, land, equipment, facilities, or other real or personal property which is necessary or convenient in connection with the provision of housing, including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities, such as administrative, community, health, recreational, educational,

and commercial facilities, as the authority determines to be necessary or convenient in relation to the purposes of this chapter.

20. "*Housing sponsor*" means any individual, joint venture, partnership, limited partnership, trust, corporation, housing cooperative, local public entity, governmental unit, or other legal entity, or any combination thereof, approved by the authority or pursuant to standards adopted by the authority as qualified to either own, construct, acquire, rehabilitate, operate, manage or maintain a housing program, whether for profit, nonprofit or limited profit, subject to the regulatory powers of the authority and other terms and conditions set forth in this chapter.

21. "*Dilapidated*" means decayed, deteriorated or fallen into partial disuse through neglect or misuse.

22. "*Property improvement loan*" means a financial obligation secured by collateral acceptable to the authority, the proceeds of which shall be used for improvement or rehabilitation of housing which is deemed by the authority to be substandard in its protective coatings or its structural, plumbing, heating, cooling, or electrical systems; and regardless of the condition of the property the term "property improvement loan" may include loans to increase the energy efficiency of housing or to finance solar or other renewable energy systems for use in that housing.

23. When used in the context of an assumption of a loan, "*assume*" or "*assumed*" means any type of transaction involving the sale or transfer of an ownership interest in real estate financed by the authority, whether the conveyance involves a transfer by deed or real estate contract or some other device.

24. "*Child foster care facilities*" means the same as defined in section 237.1.

25. "*Cost*" as applied to Iowa small business loan program projects means the cost of acquisition, construction, or both including the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for acquisition, construction, or both. It also means the cost of demolishing or removing structures on acquired land, the cost of access roads to private property, including the cost of land or easements, and the cost of all machinery, furnishings, and equipment, financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction. Cost also means the cost of engineering, legal expenses, plans, specifications, surveys, estimates of cost and revenues, as well as other expenses incidental to determining the feasibility or practicability of acquiring or constructing a project. It also means other expenses incidental to the acquisition or construction of the project, the financing of the acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of bonds, to be paid into any special funds from the proceeds of the bonds, and the financing of the placing of a project in operation.

26. "*Project*" means real or personal property connected with a facility to be acquired, constructed, improved, or equipped, with the aid of the Iowa small business loan program as provided in sections 220.61 to 220.65. However, for purposes of sections 220.101 through section 220.106 "*project*" means as defined in section 220.102.

27. "*Iowa small business loan program*" or "*loan program*" means the program for lending moneys to small business established under sections 220.61 to 220.65.

28. "*Small business*" means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association or cooperative, to which the following apply:

a. It is not an affiliate or subsidiary of a business dominant in its field of operation.

b. It has either twenty or fewer full-time equivalent positions or not more than the equivalent of three million dollars in annual gross revenues as computed, for the preceding fiscal year or as the average of the three preceding fiscal years.

c. It does not involve the operation of a farm and does not involve the practice of a profession.

"*Small business*" includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of paragraphs "a" through "c".

For purposes of this definition "dominant in its field of operation" means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and "affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

The authority may, by resolution, waive any or all of the requirements of paragraph "b" in connection with a loan to a small business, as defined under applicable federal law and regulations that have been enacted or adopted by April 1, 1983, in which federal assistance, insurance or guaranties are sought.

29. "*Mortgage-backed security*" means a security issued by the authority which is secured by residential mortgage loans owned by the authority.

30. "*Residential mortgage interest reduction program*" means the program for buying-down interest rates on residential mortgage loans pursuant to sections 220.81 through 220.84.

31. "*Residential mortgage loan*" means a financial obligation secured by a mortgage on a single-family or two-family home.

32. "*Residential mortgage marketing program*" means the program for buying and selling residential mortgage loans and the selling of mortgage-backed securities pursuant to sections 220.71 through 220.73.

33. "*Qualified residential housing*" means any of the following:

a. Owner-occupied residences purchased in a manner which satisfies the requirements contained in section 103A of the Internal Revenue Code in order to be financed with tax exempt mortgage subsidy bonds.

b. Residential property qualifying pursuant to section 103(b)(4) of the Internal Revenue Code to be financed with tax exempt residential rental property bonds.

c. Housing for low or moderate income families, elderly families, and families which include one or more persons who are handicapped or disabled.

34. "*Title guaranty*" means a guaranty against loss or damage caused by defective title to real property.

35. "*Division*" means the title guaranty division.

36. "*State housing credit ceiling*" means the state housing credit ceiling as defined in I.R.C. § 42(h)(3)(C).

37. "*Low-income housing credit*" means the low-income housing credit as defined in I.R.C. §42(a).

38. "*Export business*" means a profit or nonprofit business, including but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative that does international exporting from the state where at least twenty-five percent of the value of the international exports is derived from goods or services whose final production process occurs in the state.

39. "*International exports*" means goods or services transported or sent from the United States to a foreign country.

40. "*Export business finance program*" means the program established under sections 220.121 to 220.125.

The authority shall establish by rule further definitions applicable to this chapter, and clarification of the definitions in this section, as necessary to assure eligibility for funds available under federal housing laws, or to assure compliance with federal tax laws relating to the issuance of tax exempt mortgage subsidy bonds pursuant to I.R.C. §103A, or relating to the issuance of tax exempt

residential rental property bonds for qualified residential housing under I.R.C. §103, or relating to the allowance of low-income credits under I.R.C. §42.

87 Acts, ch 125, §1, 2 SF 499; 87 Acts, ch 141, §1 HF 636

NEW subsections 36-40

Unnumbered paragraph 2 stricken and rewritten

220.2 Establishment of authority—title guaranty division.

1. The Iowa finance authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, to undertake programs which assist in attainment of adequate housing for low or moderate income families, elderly families, and families which include one or more persons who are handicapped or disabled, and to undertake the Iowa homesteading program, the small business loan program, the export business finance program, and other finance programs. The powers of the authority are vested in and shall be exercised by a board of nine members appointed by the governor subject to confirmation by the senate. No more than five members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent community and housing development industries, housing finance industries, the real estate sales industry, elderly families, minorities, lower income families, very low income families, handicapped and disabled families, average taxpayers, local government, business and international trade interests, and any other person specially interested in community housing, finance, small business, or export business development.

A title guaranty division is created within the authority. The powers of the division as relating to the issuance of title guaranties shall be vested in and exercised by a division board of five members appointed by the governor subject to confirmation by the senate. The membership of the board shall include an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender and a representative of the housing development industry. The executive director of the authority shall appoint a director of the title guaranty division who shall be an attorney and shall serve as an ex officio member of the board. The appointment of and compensation for the division director shall be exempt from the provisions of chapter 19A.

a. Members of the board of the division shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person shall not serve on the division board while serving on the authority board. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the division board may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or for other just cause, after notice and hearing, unless notice and hearing is expressly waived in writing.

b. Three members of the board shall constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division.

c. Members of the board are entitled to receive forty dollars per diem for each day spent in performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

d. Members of the board and the director shall give bond as required for public officers in chapter 64.

e. Meetings of the board shall be held at the call of the chair of the board or on written request of two members.

f. Members shall elect a chair and vice chair annually and other officers as they determine. The director shall serve as secretary to the board.

g. The net earnings of the division, beyond that necessary for reserves, backing, guaranties issued or to otherwise implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state and are subject to subsection 8.

2. Members of the authority shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

3. Five members of the authority constitute a quorum and the affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive forty dollars per diem for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations, or to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs or activities of the authority, including the power to terminate the authority, except that no law shall ever be passed impairing the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene article I, section 21 of the Constitution of the state of Iowa or article I, section 10 of the Constitution of the United States.

87 Acts, ch 141, §2 HF 636
Subsection 1, unnumbered paragraph 1 amended

220.52 State housing credit ceiling allocation.

1. The authority is designated the housing credit agency for the allowance of low-income housing credit under the state housing credit ceiling.

2. The authority shall adopt rules and allocation procedures which will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state. The authority shall consider the following factors in the adoption and application of the allocation rules:

- a. Timeliness of the application.
- b. Location of the proposed housing project.
- c. Relative need in the proposed area for low-income housing.
- d. Availability of low-income housing in the proposed area.
- e. Economic feasibility of the proposed project.
- f. Ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

The authority shall adopt rules specifying the application procedure and the allowance of low-income housing credits under the state housing credit ceiling.

3. The authority shall not allow more than ninety percent of the low-income housing credits under the state housing credit ceiling to projects other than qualified low-income housing projects as defined in I.R.C. §42(h)(5)(B).

87 Acts, ch 125, §3 SF 499
NEW section

220.53 through 220.60 Reserved.

220.91 Title guaranty program.

1. The authority through the title guaranty division shall initiate and operate a program in which the division shall offer guaranties of real property titles in this state. The terms, conditions and form of the guaranty contract shall be forms approved by the division board. The division shall fix a charge for the guaranty in an amount sufficient to permit the program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims under the title guaranty program. A title guaranty fund is created in the office of the treasurer of state. Funds collected under this program shall be placed in the title guaranty fund and are available to pay all claims, necessary reserves and all administrative costs of the title guaranty program. Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be retained as a part of the fund and shall not accrue to the general fund. If the authority board in consultation with the division board determines that there are surplus funds in the title guaranty fund after providing for adequate reserves and operating expenses of the division, the surplus funds shall be transferred to the commitment costs fund created pursuant to section 220.40.

2. A title guaranty issued under this program is an obligation of the division only and claims are payable solely and only out of the moneys, assets and revenues of the title guaranty fund and are not an indebtedness or liability of the state. The state is not liable on the guaranties.

3. With the approval of the authority board the division and its board shall consult with the insurance division of the department of commerce in developing a guaranty contract acceptable to the secondary market and developing any other feature of the program with which the insurance division may have special expertise. The insurance division shall establish the amount for a loss reserve fund. Except as provided in this subsection, the title guaranty program is not subject to the jurisdiction of or regulation by the insurance division or the commissioner of insurance.

4. Each participating mortgage lender, attorney and abstractor shall pay an annual participation fee to be eligible to participate in the title guaranty program. The fee shall be set by the division, subject to the approval of the authority.

5. The participation of abstractors, attorneys and lenders shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

6. Prior to the issuance of a title guaranty, the division shall require evidence that an abstract of title to the property in question has been brought up-to-date and certified by a participating abstractor in a form approved by division rules and a title opinion issued by a participating attorney in the form approved in the rules stating the attorney's opinion as to the title. The division shall require evidence of the abstract being brought up-to-date and the abstractor shall retain evidence of the abstract as determined by the board.

7. The attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the authority. A person or mortgage

lender participating in the title guaranty program shall not charge or receive any portion of the charge for the guaranty as a result of their participation in the title guaranty program.

8. The authority shall adopt rules pursuant to chapter 17A that are necessary for the implementation of the title guaranty program as established by the division and that have been approved by the authority.

87 Acts, ch 75, §1 HF 517
Subsection 8 stricken; former subsection 9 renumbered 8

220.92 through 220.99 Reserved.

HOUSING TRUST FUND PROGRAM

220.100 Housing trust fund program.

1. A housing trust fund is created within the authority. The moneys in the housing trust fund are annually appropriated to the authority which shall allocate the available funds among and within the programs authorized by this section. The authority may provide financial assistance in the form of loans, guarantees, grants, interest subsidies or by other means for the programs authorized by this section.

2. By rule, the authority shall establish the following financial assistance programs and provide the requirements for their proper administration:

a. A grant program for the homeless for the construction, rehabilitation, or expansion of group home shelter for the homeless.

b. A home maintenance and repair program providing repair services to elderly, handicapped, or disabled families which qualify as lower income or very low income families.

c. A rental rehabilitation program for the construction or rehabilitation of single or multifamily rental properties leased to lower income or very low income families.

d. A home ownership incentive program to help lower income and very low income families achieve single family home ownership.

3. The authority shall coordinate the programs authorized by this section with the other programs under the jurisdiction of the authority.

4. Each application for financial assistance shall be rated based on local, housing sponsor, and recipient financial commitment, proposals for leveraging other financial assistance, experience with the recipient group involved, consideration for the housing project in the context of overall community needs, including vacancy rate of rental property and ratio of subsidized rental housing to nonsubsidized housing, ability to provide a counseling support system to the recipients, and a demonstrated capability by the housing sponsor to provide follow-up monitoring of recipients to determine if identifiable results have been achieved.

5. For the purposes of this section, "housing sponsor" is limited to private nonprofit corporations and local governments and joint ventures involving a private nonprofit corporation or local government and does not include a for-profit entity.

6. None of the funds provided to a housing sponsor under this section shall be used for the costs of administration. The authority may expend up to four percent of the funds appropriated for the programs in this section for the administrative costs under this section to hire adequate staff to carry out these programs.

7. This section is repealed July 1, 1989.

87 Acts, ch 220, §1 HF 603
NEW section

220.104 Loan agreements.

1. The authority may enter into loan agreements with one or more borrowers to finance in whole or in part the acquisition of one or more projects by

construction or purchase. The repayment obligation of the borrower or borrowers may be unsecured, secured by a mortgage or security agreement, or secured by other security as the authority deems advisable. The repayment obligation may be evidenced by one or more notes of the borrower or borrowers. The loan agreements may contain terms and conditions the authority deems advisable.

2. The authority may issue its bonds and notes for the projects set forth in section 220.102 and may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee or agent designated by the authority may enter into agreements to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply the amounts payable under the loan agreements or any other security instruments securing the debt obligations of the borrower or borrowers.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or security instruments on their own behalf without the appointment or designation of a trustee. If there is a default in the principal or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or security instruments, the payment or performance may be enforced in accordance with the loan agreement or security instrument.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or if there is a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced. Collateral may be sold under proceedings or actions permitted by law. A trustee under the mortgage or security agreement or the holder of any bonds or notes secured by the mortgage or security agreement may become a purchaser if the trustee or holder is the highest bidder.

e. Other terms and conditions as deemed necessary or appropriate by the authority.

87 Acts, ch 115, §33 SF 374
See Code editor's note
Subsection 2, unnumbered paragraph 1 amended

220.112 through 220.120 Reserved.

EXPORT BUSINESS FINANCE PROGRAM

Intent that legislative council study feasibility of world trade institute; limited authority to economic development department to provide for a foreign visitor reception and information center, leased exhibit space, a one-year agreement for representation of Iowa as a location for foreign investment, and encouragement of trade shows and missions;
87 Acts, ch 141, §8-11 HF 636

220.121 Legislative findings— purposes—public policy.

1. The general assembly finds and declares as follows:

a. The economy of the state of Iowa and opportunities for employment within the state are increasingly dependent upon the international exports of Iowa manufactured goods and services and the growth of international export markets for those manufactured goods and services.

b. Other states have utilized or are preparing to utilize the resources of their state governments to stimulate, facilitate, and promote international exports.

c. Competition among businesses and countries will endure and intensify as more countries seek to expand their international export capacities.

d. Expanding international export markets is essential in order to maintain a vigorous and growing economy and to provide adequate job opportunities for Iowa citizens.

e. Iowa has a responsibility to create employment opportunities by encouraging and stimulating the development of international export sales and markets by export businesses.

f. Iowa export businesses find it increasingly difficult to compete with foreign exporters which benefit from their governmentally supported financing programs.

g. Increased export sales may best be stimulated by making financial assistance available to export businesses to develop and expand international export markets and to ensure the competitiveness of Iowa products and services in foreign markets, thereby increasing employment opportunities available to the citizens of Iowa.

h. Export businesses seeking to enter foreign markets face severe problems financing and insuring their transactions.

i. Export business expansion and development is dependent upon the availability of financing for expansion at interest rates, terms, and conditions which are reasonable to export businesses.

j. Private and public financing for export businesses with reasonable rates, terms, and conditions is unavailable to assist export business expansion and development.

k. The Iowa export business finance program is necessary to encourage the investment of private capital in export business expansion and development.

2. The purposes of the export business finance program are to:

a. Promote the business prosperity and economic welfare of Iowa and Iowans.

b. Provide financial assistance for the location of new or the expansion of existing export businesses in Iowa through the sale of bonds and notes, subsidies, loans, guarantees, insurance, grants, investments, contracts, or other transactions.

c. Provide employment opportunities and thereby improve the standard of living of Iowans.

d. Promote industrial, commercial, and recreational development in Iowa.

3. All of the purposes stated in this section are public purposes and uses for which public moneys provided by the sale of bonds and notes, or otherwise available through appropriations, grants, contributions, or declared surplus moneys may be used.

4. It is the public policy of the state through the establishment of the export business finance program to promote the economic welfare of Iowans and to improve employment opportunities for Iowans. To advance the public policy the authority may provide financial assistance for export businesses through the sale of bonds and notes, loans, guarantees, insurance, grants, subsidies, investments, contracts, or other transactions.

87 Acts, ch 141, §3 HF 636
NEW section

220.122 Iowa export business finance program.

The authority shall initiate a program to assist the development and expansion of export business in the state. The authority may issue bonds and notes the proceeds of which shall be used to provide financial assistance for export businesses. The authority may also provide financial assistance to export businesses through the use of loans, guarantees, insurance, grants, subsidies, investments, contracts, or other transactions.

87 Acts, ch 141, §4 HF 636
NEW section

220.123 Export business finance program—powers.

In assisting Iowa export businesses, the authority has all the powers specified in section 220.5 and in this part including, but not limited to, the following:

1. The authority may provide financial assistance, including guarantees described in subsection 2, to mortgage lenders or export businesses to finance international exports from the state which, in the judgment of the authority, will create or maintain employment in Iowa. Financial assistance shall only be provided where at least twenty-five percent of the value of the international exports is derived from goods or services whose final production process occurs in the state. The authority may charge reasonable fees for providing financial assistance.

2. The authority may provide guarantees for international exports against political or commercial loss, in whole or in part, of principal and interest. The guarantees may include, without limitation, insurance against a loss up to a stated amount which shall be set by the authority. Guarantees may include a pool of individual export transactions. A guarantee entered into by the authority shall not constitute a general obligation of the state of Iowa. Guarantees made by the authority shall not be terminated, canceled, or otherwise revoked except in accordance with the terms of the guarantees.

3. The authority shall provide financial assistance only to the extent that the financial assistance is reasonably necessary to stimulate or facilitate the making of an international export transaction including, without limitation, the making of the international export transaction upon terms which will enable the transaction to be reasonably competitive with transactions in other states or in foreign countries. The authority may condition the provision of financial assistance upon such other terms and conditions as it may deem desirable to carry out the purposes of the program. Prior to providing financial assistance, the participating mortgage lender shall make an investigation of a line of credit to the export business in order to determine its viability, the economic benefits to be derived from the line of credit, the prospects for repayment, and other facts as it deems necessary in order to determine that financial assistance is consistent with the purposes of the program.

87 Acts, ch 141, §5 HF 636
NEW section

220.124 Advisory board.

The executive director may appoint a three-member advisory board to advise the authority on matters relating to international exporting and the export business finance program. Advisory board members shall be selected primarily for knowledge in the areas of international trade, finance, or business management.

87 Acts, ch 141, §6 HF 636
NEW section

220.125 Coordination of programs.

The authority shall coordinate with the department of economic development the marketing and educational aspects of the export business finance program. The authority and the department shall also coordinate economic development efforts and existing programs with the export business finance program.

87 Acts, ch 141, §7 HF 636
NEW section

CHAPTER 229

HOSPITALIZATION OF MENTALLY ILL PERSONS

229.1 Definitions.

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

1. "*Mental illness*" means every type of mental disease or mental disorder, except that it does not refer to mental retardation as defined in section 222.2, subsection 5, or to insanity, diminished responsibility, or mental incompetency as

the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules, 2d ed.

2. "*Seriously mentally impaired*" or "*serious mental impairment*" describes the condition of a person who is afflicted with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who:

a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment; or

b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the afflicted person if the afflicted person is allowed to remain at liberty without treatment.

3. "*Serious emotional injury*" is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other qualified mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

4. "*Respondent*" means any person against whom an application has been filed under section 229.6, but who has not been finally ordered committed for full-time custody, care and treatment in a hospital.

5. "*Patient*" means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

6. "*Licensed physician*" means an individual licensed under the provisions of chapter 148, 150 or 150A to practice medicine and surgery, osteopathy or osteopathic medicine and surgery.

7. "*Qualified mental health professional*" means an individual experienced in the study and treatment of mental disorders in the capacity of:

a. A psychologist certified under chapter 154B; or

b. A registered nurse licensed under chapter 152; or

c. A social worker who holds a master's degree in social work awarded by an accredited college or university.

8. "*Public hospital*" means:

a. A state mental health institute established by chapter 226; or

b. The state psychiatric hospital established by chapter 225; or

c. Any other publicly supported hospital or institution, or part of such hospital or institution, which is equipped and staffed to provide inpatient care to the mentally ill, except the Iowa medical and classification center established by chapter 246.

9. "*Private hospital*" means any hospital or institution not directly supported by public funds, or a part thereof, which is equipped and staffed to provide inpatient care to the mentally ill.

10. "*Hospital*" means either a public hospital or a private hospital.

11. "*Chief medical officer*" means the medical director in charge of a public or private hospital, or that individual's physician-designee. This chapter does not negate the authority otherwise reposed by law in the respective superintendents of each of the state hospitals for the mentally ill, established by chapter 226, to make decisions regarding the appropriateness of admissions or discharges of patients of that hospital, however it is the intent of this chapter that if the superintendent is not a licensed physician the decisions by the superintendent shall be corroborated by the chief medical officer of the hospital.

12. "*Clerk*" means the clerk of the district court.

13. "*Director*" or "*state director*" means the director of that division of the department of human services having jurisdiction of the state mental health institutes, or that director's designee.

14. "*Chemotherapy*" means treatment of an individual by use of a drug or substance which cannot legally be delivered or administered to the ultimate user without a physician's prescription or medical order.

87 Acts, ch 90, §1 HF 525
Subsection 11 amended

229.2 Application for voluntary admission—authority to receive voluntary patients.

1. An application for admission to a public or private hospital for observation, diagnosis, care, and treatment as a voluntary patient may be made by any person who is mentally ill or has symptoms of mental illness.

In the case of a minor, the parent, guardian, or custodian may make application for admission of the minor as a voluntary patient.

a. Upon receipt of an application for voluntary admission of a minor, the chief medical officer shall provide separate prescreening interviews and consultations with the parent, guardian or custodian and the minor to assess the family environment and the appropriateness of the application for admission.

b. During the interview and consultation the chief medical officer shall inform the minor orally and in writing that the minor has a right to object to the admission. If the chief medical officer of the hospital to which application is made determines that the admission is appropriate but the minor objects to the admission, the parent, guardian or custodian must petition the juvenile court for approval of the admission before the minor is actually admitted.

c. As soon as is practicable after the filing of a petition for juvenile court approval of the admission of the minor, the juvenile court shall determine whether the minor has an attorney to represent the minor in the hospitalization proceeding, and if not, the court shall assign to the minor an attorney. If the minor is financially unable to pay for an attorney, the attorney shall be compensated in substantially the manner provided by section 815.7.

d. The juvenile court shall determine whether the admission is in the best interest of the minor and is consistent with the minor's rights.

e. The juvenile court shall order hospitalization of a minor, over the minor's objections, only after a hearing in which it is shown by clear and convincing evidence that:

(1) The minor needs and will substantially benefit from treatment.

(2) No other setting which involves less restriction of the minor's liberties is feasible for the purposes of treatment.

f. Upon approval of the admission of a minor over the minor's objections, the juvenile court shall appoint an individual to act as an advocate representing the interests of the minor in the same manner as an advocate representing the interests of patients involuntarily hospitalized pursuant to section 229.19.

2. Upon receiving an application for admission as a voluntary patient, made pursuant to subsection 1:

a. The chief medical officer of a public hospital shall receive and may admit the person whose admission is sought, subject in cases other than medical emergencies to availability of suitable accommodations and to the provisions of sections 229.41 and 229.42.

b. The chief medical officer of a private hospital may receive and may admit the person whose admission is sought.

87 Acts, ch 90, §2 HF 525
Subsection 1 amended

229.6A Hospitalization of minors—jurisdiction—due process.

1. Notwithstanding section 229.11, the juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application for involuntary admission is filed under section 229.6 or for whom an application for voluntary admission is made under section 229.2, subsection 1, to which the

minor objects. In proceedings under this chapter concerning a minor, notwithstanding section 229.11, the terms "court", "judge", "referee", or "clerk" mean the juvenile court, judge, referee, or clerk.

2. The procedural requirements of this chapter are applicable to minors involved in hospitalization proceedings pursuant to subsection 1.

3. It is the intent of this chapter that when a minor is involuntarily or voluntarily hospitalized or hospitalized with juvenile court approval over the minor's objection the minor's family shall be included in counseling sessions offered during the minor's stay in a hospital when feasible. Prior to the discharge of the minor the juvenile court may, after a hearing, order that the minor's family be evaluated and therapy ordered if necessary to facilitate the return of the minor to the family setting.

87 Acts, ch 90, §3 HF 525
NEW section

229.19 Advocates—duties—compensation—state liability.

The district court in each county shall appoint an individual who has demonstrated by prior activities an informed concern for the welfare and rehabilitation of the mentally ill, and who is not an officer or employee of the department of human services nor of any agency or facility providing care or treatment to the mentally ill, to act as advocate representing the interests of patients involuntarily hospitalized by the court, in any matter relating to the patients' hospitalization or treatment under section 229.14 or 229.15. The court shall assign the advocate appointed from the patient's county of legal settlement to the patient, or if the patient has no county of legal settlement, the court shall assign the advocate appointed from the county where the hospital or facility is located. The advocate's responsibility with respect to any patient shall begin at whatever time the attorney employed or appointed to represent that patient as respondent in hospitalization proceedings, conducted under sections 229.6 to 229.13, reports to the court that the attorney's services are no longer required and requests the court's approval to withdraw as counsel for that patient. However, if the patient is found to be seriously mentally impaired at the hospitalization hearing, the attorney representing the patient shall automatically be relieved of responsibility in the case and an advocate shall be assigned to the patient at the conclusion of the hearing unless the attorney indicates an intent to continue the attorney's services and the court so directs. If the court directs the attorney to remain on the case the attorney shall assume all the duties of an advocate. The clerk shall furnish the advocate with a copy of the court's order approving the withdrawal and shall inform the patient of the name of the patient's advocate. With regard to each patient whose interests the advocate is required to represent pursuant to this section, the advocate's duties shall include all of the following:

1. To review each report submitted pursuant to sections 229.14 and 229.15.
2. If the advocate is not an attorney, to advise the court at any time it appears that the services of an attorney are required to properly safeguard the patient's interests.
3. To make the advocate readily accessible to communications from the patient and to originate communications with the patient within five days of the patient's commitment.
4. To visit the patient within fifteen days of the patient's commitment and periodically thereafter.
5. To communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25.
6. To file with the court quarterly reports, and additional reports as the advocate feels necessary or as required by the court, in a form prescribed by the court. The reports shall state what actions the advocate has taken with respect to each patient and the amount of time spent.

The hospital or facility to which a patient is committed shall grant all reasonable requests of the advocate to visit the patient, to communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25. An advocate shall not disseminate information from a patient's medical records to any other person unless done for official purposes in connection with the advocate's duties pursuant to this chapter or when required by law.

The court shall from time to time prescribe reasonable compensation for the services of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid on order of the court by the county in which the court is located. The advocate is an employee of the state for purposes of chapter 25A.

87 Acts, ch 57, §1 HF 251
Unnumbered paragraph 1 amended

229.21 Judicial hospitalization referee.

1. The judges in each judicial district shall meet and determine, individually for each county in the district, whether one or more district judges or magistrates will be sufficiently accessible in that county to make it feasible for them to perform at all times the duties prescribed by sections 229.7 to 229.19 and section 229.22 and by sections 125.75 to 125.94. If the judges find that accessibility of district court judges or magistrates in any county is not sufficient for this purpose, the chief judge of the district shall appoint in that county a judicial hospitalization referee. The judges in any district may at any time review their determination, previously made under this subsection with respect to any county in the district, and pursuant to that review may authorize appointment of a judicial hospitalization referee, or abolish the office, in that county.

2. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of and receive compensation at a rate fixed by the chief judge of the district. If the referee expects to be absent from the county for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

3. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of substance abusers under sections 125.75 to 125.94 is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge is accessible in the county, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon judges of the district court or magistrates by sections 229.7 to 229.19 or sections 125.75 to 125.94 in the proceeding so initiated. If an emergency hospitalization proceeding is initiated under section 229.22 a judicial hospitalization referee may perform the duties imposed upon a magistrate by that section. However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

4. Any respondent with respect to whom the judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, may appeal from the referee's finding to a judge of the district court by giving the clerk notice in writing, within seven days after the referee's finding is made, that an appeal therefrom is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian or attorney. When so appealed, the matter shall stand for trial de novo.

Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

5. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 125.81, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

6. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 125.82 and 125.83. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

87 Acts, ch 190, §2 HF 210
Subsection 3 amended

229.26 Exclusive procedure for involuntary hospitalization.

Sections 229.6 to 229.19 constitute the exclusive procedure for involuntary hospitalization of persons by reason of serious mental impairment in this state, except that this chapter does not negate the provisions of section 246.503 relating to transfer of mentally ill prisoners to state hospitals for the mentally ill and does not apply to commitments of persons under chapter 812 or the rules of criminal procedure, Iowa court rules, 2d ed., or negate the provisions of section 232.51 relating to disposition of mentally ill or mentally retarded children and section 229.6A relating to a juvenile court's jurisdiction over proceedings involving minors.

87 Acts, ch 90, §4 HF 525
Section amended

CHAPTER 230

SUPPORT OF THE MENTALLY ILL

230.10 Payment of costs.

All legal costs and expenses attending the taking into custody, care, investigation, and admission or commitment of a person to a state hospital for the mentally ill under a finding that such person has a legal settlement in another county of this state, shall be charged against the county of legal settlement.

87 Acts, ch 36, §1 SF 90
Section amended

230.20 Billing of patient charges—computation of actual costs—cost settlement.

1. The superintendent of each mental health institute shall compute by February 1 the average daily patient charges and other service charges for which each county will be billed for services provided to patients chargeable to the county during the fiscal year beginning the following July 1. The department

shall certify the amount of the charges to the director of revenue and finance and notify the counties of the billing charges.

a. The superintendent shall separately compute by program the average daily patient charge for a mental health institute for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the program for the immediately preceding calendar year, by adjusting the expenditures by a percentage not to exceed the percentage increase in the consumer price index for all urban consumers for the immediately preceding calendar year, and by dividing the adjusted expenditures by the total inpatient days of service provided in the program during the immediately preceding calendar year. However, the superintendent shall not include the following in the computation of the average daily patient charge:

(1) The costs of food, lodging, and other maintenance provided to persons not patients of the hospital.

(2) The costs of certain direct medical services identified in administrative rule, which may include but need not be limited to X-ray, laboratory, and dental services.

(3) The costs of outpatient and state placement services.

b. The department shall compute the direct medical services, outpatient, and state placement services charges, in accordance with generally accepted accounting procedures, on the basis of the actual cost of the services provided during the immediately preceding calendar year. The direct medical services, outpatient, and state placement services shall be billed directly against the patient who received the services.

2. The superintendent shall certify to the director of revenue and finance the billings to each county for services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and other service charges computed pursuant to subsection 1, and the number of inpatient days and other service units chargeable to the county. However, a county billing shall be decreased by an amount equal to reimbursement by a third party payor or estimation of such reimbursement from a claim submitted by the superintendent to the third party payor for the preceding calendar quarter. When the actual third party payor reimbursement is greater or less than estimated, the difference shall be reflected in the county billing in the calendar quarter the actual third party payor reimbursement is determined.

3. The superintendent shall compute in January the actual per-patient-per-day cost for each mental health institute for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the mental health institute for the calendar year and by dividing the total actual expenditures by the total inpatient days of service provided during the calendar year.

4. The department shall certify to the director of revenue and finance and the counties by February 1 the actual per-patient-per-day costs, as computed pursuant to subsection 3, and the actual costs owed by each county for the immediately preceding calendar year for patients chargeable to the county. If the actual costs owed by the county are greater than the charges billed to the county pursuant to subsection 2, the director of revenue and finance shall bill the county for the difference with the billing for the quarter ending June 30. If the actual costs owed by the county are less than the charges billed to the county pursuant to subsection 2, the director of revenue and finance shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. An individual statement shall be prepared for a patient on or before the fifteenth day of the month following the month in which the patient leaves the mental health institute, and a general statement shall be prepared at least quarterly for each county to which charges are made under this section. Except as otherwise required by sections 125.33 and 125.34 the general statement shall list

the name of each patient chargeable to that county who was served by the mental health institute during the preceding month or calendar quarter, the amount due on account of each patient, and the specific dates for which any third party payor reimbursement received by the state is applied to the statement and billing, and the county shall be billed for eighty percent of the stated charge for each patient specified in this subsection. The statement prepared for each county shall be certified by the department to the director of revenue and finance and a duplicate statement shall be mailed to the auditor of that county.

6. All or any reasonable portion of the charges incurred for services provided to a patient, to the most recent date for which the charges have been computed, may be paid at any time by the patient or by any other person on the patient's behalf. Any payment so made, and any federal financial assistance received pursuant to Title XVIII or XIX of the federal Social Security Act for services rendered to a patient, shall be credited against the patient's account and, if the charges so paid have previously been billed to a county, reflected in the mental health institute's next general statement to that county.

87 Acts, ch 37, §1 SF 76
Subsections 2 and 5 amended

CHAPTER 232

JUVENILE JUSTICE

232.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Abandonment of a child*" means the permanent relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

2. "*Adjudicatory hearing*" means a hearing to determine if the allegations of a petition are true.

3. "*Adult*" means a person other than a child.

4. "*Case permanency plan*" means the plan, mandated by Pub. L. No. 96-272, as codified in 42 U.S.C., secs. 671(a)(16), 627(a)(2)(B), and 675(1)(5), designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child. The plan shall specifically include all of the following:

a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

b. The type and appropriateness of the placement and services to be provided to the child.

c. The care and services that will be provided to the child, natural parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

5. "*Child*" means a person under eighteen years of age.

6. "*Child in need of assistance*" means an unmarried child:

a. Whose parent, guardian or other custodian has abandoned the child.

b. Whose parent, guardian or other custodian has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of:

(1) Conditions created by the child's parent, guardian, custodian; or

(2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.

d. Who has been sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, or custodian.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

j. Who is without a parent, guardian or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

7. "*Commissioner*" means the commissioner of the department of human services or that person's designee.

8. "*Complaint*" means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

9. "*Court*" means the juvenile court established under section 602.7101.

9A. "*Court appointed special advocate*" means a person duly certified by the judicial department for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. "*Criminal justice agency*" means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. "*Custodian*" means a step-parent or a relative within the fourth degree of consanguinity to a minor child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child shall be as follows:

a. To maintain or transfer to another the physical possession of that child.

b. To protect, train, and discipline that child.

c. To provide food, clothing, housing, and medical care for that child.

d. To consent to emergency medical care, including surgery.

e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. "*Delinquent act*" means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

13. "*Department*" means the department of human services and includes the local, county and regional officers of the department.

14. "*Detention*" means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child's initial contact with the juvenile authorities and the final disposition of the child's case.

15. "*Detention hearing*" means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

16. "*Dismissal of complaint*" means the termination of all proceedings against a child.

17. "*Dispositional hearing*" means a hearing held after an adjudication to determine what dispositional order should be made.

18. "*Family in need of assistance*" means a family in which there has been a breakdown in the relationship between a child and the child's parent, guardian or custodian.

19. "*Guardian*" means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.

b. To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.

c. To serve as custodian, unless another person has been appointed custodian.

d. To make periodic visitations if the guardian does not have physical possession or custody of the child.

e. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

20. "*Guardian ad litem*" means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions pursuant to section 232.54, subsections 1 and 4, and section 232.103, subsection 2, paragraph "c".

21. "*Health practitioner*" means a licensed physician or surgeon, osteopath, osteopathic physician or surgeon, dentist, optometrist, podiatrist or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

22. "*Informal adjustment*" means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

a. Placement of the child on nonjudicial probation.

b. Provision of intake services.

c. Referral of the child to a public or private agency other than the court for services.

23. "*Informal adjustment agreement*" means an agreement between an intake officer, a child who is the subject of a complaint, and the child's parent, guardian or custodian providing for the informal adjustment of the complaint.

24. "*Intake*" means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

25. "*Intake officer*" means a juvenile court officer or other officer appointed by the court to perform the intake function.

26. "*Judge*" means the judge of a juvenile court.

27. "*Juvenile court social records*" or "*social records*" means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

28. "*Juvenile detention home*" means a physically restricting facility used only for the detention of children.

29. "*Juvenile parole officer*" means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

30. "*Juvenile court officer*" means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. "*Juvenile shelter care home*" means a physically unrestricting facility used only for the shelter care of children.

32. "*Nonjudicial probation*" means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child's conduct and activities.

33. "*Nonsecure facility*" means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

34. "*Official juvenile court records*" or "*official records*" means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

- a. The docket of the court and entries therein.
- b. Complaints, petitions, other pleadings, motions, and applications filed with a court.
- c. Any summons, notice, subpoena, or other process and proofs of publication.
- d. Transcripts of proceedings before the court.
- e. Findings, judgments, decrees and orders of the court.

35. "*Parent*" means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

36. "*Peace officer*" means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

37. "*Petition*" means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

38. "*Physical abuse or neglect*" or "*abuse or neglect*" means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian or custodian or other person legally responsible for the child.

39. "*Predisposition investigation*" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

40. "*Predisposition report*" is a report furnished to the court which contains the information collected during a predisposition investigation.

41. "*Probation*" means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

42. "*Registry*" means the central registry for child abuse information as established under chapter 235A.

43. "*Residual parental rights and responsibilities*" means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

44. "*Secure facility*" means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

45. "*Sexual abuse*" means the commission of a sex offense as defined by the penal law.

46. "*Shelter care*" means the temporary care of a child in a physically unrestricting facility at any time between a child's initial contact with juvenile authorities and the final judicial disposition of the child's case.

47. "*Shelter care hearing*" means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

48. "*Social investigation*" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

49. "*Social report*" means a report furnished to the court which contains the information collected during a social investigation.

50. "*Taking into custody*" means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

51. "*Termination hearing*" means a hearing held to determine whether the court should terminate a parent-child relationship.

52. "*Termination of the parent-child relationship*" means the divestment by the court of the parent's and child's privileges, duties and powers with respect to each other.

53. "*Waiver hearing*" means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

87 Acts, ch 121, §1, 2 HF 515
NEW subsection 9A
Subsection 20 amended

232.8 Jurisdiction.

1. The juvenile court has exclusive original jurisdiction in proceedings concerning a child who is alleged to have committed a delinquent act unless otherwise provided by law, and has exclusive original jurisdiction in proceedings concerning an adult who is alleged to have committed a delinquent act prior to having become an adult, provided that the taking of that person into custody for the alleged act or the filing of a delinquency petition alleging the commission of the act occurs within the time periods and under the conditions specified in chapter 802.

The juvenile court has jurisdiction over such an adult for one year beyond the last date upon which jurisdiction over the adult attaches under this subsection.

Violations by a child of provisions of chapter 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would be simple misdemeanors if committed by an adult, and violations of county or municipal curfew or traffic ordinances, and violations by a child of the provisions of section 123.47, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. The court may advise appropriate juvenile authorities and may refer violations of section 123.47 to the juvenile court when there is reason to believe the child regularly abuses alcohol and may be in need of treatment. The court shall notify the parents or legal guardians of a child who appears before it for a violation of section 123.47. A child convicted of a violation under this paragraph shall be sentenced pursuant to section 903.1, subsection 3.

2. A case involving a person charged in a court other than the juvenile court with the commission of a public offense not exempted by law from the jurisdiction of the juvenile court and who is within the provisions of subsection 1 of this section shall immediately be transferred to the juvenile court. The transferring court shall order a transfer and shall forward the transfer order together with all papers, documents and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court. The jurisdiction of the juvenile court shall attach immediately upon the signing of an order of transfer. From the time of transfer, the custody, shelter care and detention of the person alleged to have committed a delinquent act shall be in accordance with the provisions of this chapter and the case shall be processed in accordance with the provisions of this chapter.

3. The juvenile court, after a hearing and in accordance with the provisions of section 232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult for such offense in another court. If the child pleads guilty or is found guilty of a public offense in another court of this state that court may, with the consent of the child, defer judgment and without regard to restrictions placed upon deferred judgments for adults, place the child on probation for a period not less than one year upon such conditions as it may require. Upon fulfillment of the conditions of probation the child shall be discharged without entry of judgment.

4. Nothing in this chapter shall be interpreted as affecting the statutory limitations on prosecutions for murder in the first or second degree.

87 Acts, ch 149, §1 SF 522

Subsection 1, unnumbered paragraph 3 amended

232.13 State liability.

1. For purposes of chapter 25A, the following persons shall be considered state employees:

a. A child given a work assignment of value to the state or the public or a community work assignment under this chapter.

b. A court appointed special advocate.

2. The state of Iowa is exclusively liable for and shall pay any compensation becoming due a person under section 85.59.

87 Acts, ch 121, §3 HF 515; 87 Acts, ch 24, §1 HF 630

See Code editor's note

Unnumbered paragraph 1 amended

Section stricken and rewritten

232.22 Placement in detention.

1. No child shall be placed in detention unless:

a. The child is being held under warrant for another jurisdiction; or

b. The child is an escapee from a juvenile correctional or penal institution; or

c. There is probable cause to believe that the child has violated conditions of release imposed under section 232.44, subsection 5, paragraph "b", 232.52, or

232.54 and there is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance; or

d. There is probable cause to believe the child has committed a delinquent act, and:

(1) There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance; or

(2) There is a serious risk that the child if released may commit an act which would inflict serious bodily harm on the child or on another; or

(3) There is a serious risk that the child if released may commit serious damage to the property of others.

2. A child may be placed in detention as provided in this section in one of the following facilities only:

a. A juvenile detention home.

b. Any other suitable place designated by the court other than a facility under paragraph "c".

c. A room in a facility intended or used for the detention of adults if there is probable cause to believe that the child has committed a delinquent act which if committed by an adult would be a felony, and if all of the following apply:

(1) The child is at least sixteen years of age.

(2) The child has shown by the child's conduct, habits, or condition that the child constitutes an immediate and serious danger to another or to the property of another, and a facility or place enumerated in paragraph "a" or "b" is unavailable, or the court determines that the child's conduct or condition endangers the safety of others in the facility.

(3) The facility has an adequate staff to supervise and monitor the child's activities at all times.

(4) The child is confined in a room entirely separated from detained adults, is confined in a manner which prohibits communication with detained adults, and is permitted to use common areas of the facility only when no contact with detained adults is possible.

d. A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement under section 232.52, subsection 2, paragraph "e" while the adjudicated child is awaiting transfer to the disposition placement.

3. A child shall not be held in a facility under subsection 2, paragraph "a" or "b" for a period in excess of twenty-four hours without an oral or written court order authorizing the detention. When the detention is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

4. A child shall not be detained in a facility under subsection 2, paragraph "c" for a period of time in excess of six hours without the oral or written order of a judge or a magistrate authorizing the detention. A judge or magistrate may authorize detention in a facility under subsection 2, paragraph "c" for a period of time in excess of six hours but less than twenty-four hours, excluding weekends and legal holidays, but only if all of the following occur or exist:

a. The facility serves a geographic area outside a standard metropolitan statistical area as determined by the United States census bureau.

b. The court determines that an acceptable alternative placement does not exist pursuant to criteria developed by the department of human services.

c. The facility has been certified by the department of corrections as being capable of sight and sound separation pursuant to this section and 356.3.

d. The child is awaiting an initial hearing before the court pursuant to section 232.44.

5. An adult within the jurisdiction of the court under section 232.8, subsection 1, who has been placed in detention, is not bailable under chapter 811. If such an adult is detained in a room in a facility intended or used for the detention of

adults, the adult shall be confined in a room entirely separated from adults not within the jurisdiction of the court under section 232.8, subsection 1.

87 Acts, ch 149, §2-4 SF 522

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraphs a, b and c amended

Subsection 4 amended

232.44 Detention or shelter care hearing—release from detention upon change of circumstance.

1. A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the time of a child's admission to a detention facility. If the hearing is not held within the time specified, the child shall be released from shelter care or detention. Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

2. The county attorney or a juvenile court officer may apply for a hearing at any time after the petition is filed to determine whether the child who is the subject of the petition should be placed in detention or shelter care. The court may upon the application or upon its own motion order such hearing.

3. A notice shall be served upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twelve hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without the notice having been served.

4. At the hearing the court shall admit only testimony and other evidence relevant to the determination of whether there is probable cause to believe the child has committed the act as alleged in the petition and to the determination of whether the placement of the child in detention or shelter care is authorized under section 232.21 or 232.22. Any written reports or records made available to the court at the hearing shall be made available to the parties. A copy of the petition shall be given to each of the parties at or before the hearing.

5. The court shall find release to be proper under the following circumstances:

a. If the court finds that there is not probable cause to believe that the child is a child within the jurisdiction of the court under this chapter, it shall release the child and dismiss the petition.

b. If the court finds that detention or shelter care is not authorized under section 232.21 or 232.22, or is authorized but not warranted in a particular case, the court shall order the child's release, and in so doing, may impose one or more of the following conditions:

(1) Place the child in the custody of a parent, guardian or custodian under that person's supervision, or under the supervision of an organization which agrees to supervise the child.

(2) Place restrictions on the child's travel, association, or place of residence during the period of release.

(3) Impose any other condition deemed reasonably necessary and consistent with the grounds for detaining children specified in section 232.21 or 232.22, including a condition requiring that the child return to custody as required.

c. An order releasing a child on conditions specified in this section may be amended at any time to impose equally or less restrictive conditions. The order may be amended to impose additional or more restrictive conditions, or to revoke the release, if the child has failed to conform to the conditions originally imposed.

6. If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court under this chapter and that full-time detention or shelter care is authorized under section 232.21 or 232.22, it may issue an order

authorizing either shelter care or detention until the adjudicatory hearing is held or for a period not exceeding seven days whichever is shorter.

7. If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place.

8. A child held in a detention or shelter care facility under order of court after a hearing may be released upon a showing that a change of circumstances makes continued detention unnecessary.

9. A written request for the release of the child, setting forth the changed circumstances, may be filed by the child, by a responsible adult on the child's behalf, by the child's custodian, or by the juvenile court officer.

10. Based upon the facts stated in the request for release the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place determined by the court. Notice of the hearing shall be given to the child and the child's custodian or counsel. Upon receiving evidence at the hearing, the court may release the child to the child's custodian or other suitable person, or may deny the request and remand the child to the detention or shelter care facility.

11. This section does not apply to a child placed in accordance with section 232.78, 232.79, or 232.95.

87 Acts, ch 149, §5 SF 522
Subsections 1 and 3 amended

232.50 Dispositional hearing.

1. As soon as practicable following the entry of an order of adjudication pursuant to section 232.47, the court shall hold a dispositional hearing in order to determine what disposition should be made of the matter.

2. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to section 232.52, subsection 2, paragraph "d" or "e", to determine the future disposition status of the child. The hearings shall not be waived or continued beyond eighteen months after the last dispositional hearing or dispositional review hearing.

3. At dispositional hearings under this section all relevant and material evidence shall be admitted.

4. When a dispositional hearing under this section is concluded the court shall enter an order to make any one or more of the dispositions authorized under section 232.52.

87 Acts, ch 159, §1 HF 567
Section amended

232.68 Definitions.

As used in sections 232.67 through 232.77 and 235A.12 through 235A.23, unless the context otherwise requires:

1. "*Child*" means any person under the age of eighteen years.

2. "*Child abuse*" or "*abuse*" means:

a. Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

b. The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding

section 702.5, the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.

c. The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

d. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

3. "*Department*" means the state department of human services and includes the local, county and regional offices of the department.

4. "*Health practitioner*" includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatrist or chiropractor; a resident or intern in any of such professions; and any registered nurse or licensed practical nurse.

5. "*Mental health professional*" means a person who meets the following requirements:

a. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148, 150, or 150A.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

6. "*Person responsible for the care of a child*" means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

7. "*Registry*" means the central registry for child abuse information established in section 235A.14.

87Acts, ch 153, §1, 2 HF 412

Subsection 2, unnumbered paragraph 1 amended

NEW subsection 5 and former subsection 5 renumbered as 7

232.69 Mandatory and permissive reporters—training required.

1. The following classes of persons shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse:

a. Every health practitioner who examines, attends, or treats a child and who reasonably believes the child has been abused.

b. Every self-employed social worker, every social worker under the jurisdiction of the department of human services, any social worker employed by a public or private agency or institution, public or private health care facility as defined in section 135C.1, certified psychologist, certificated school employee, employee or operator of a licensed child care center or registered group day care home or registered family day care home, individual licensee under chapter 237, member of the staff of a mental health center, peace officer, dental hygienist, counselor,

paramedic, or mental health professional, who, in the course of employment or in providing child foster care, examines, attends, counsels or treats a child and reasonably believes a child has suffered abuse.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within one year of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. The person shall complete at least two hours of additional child abuse identification and reporting training every five years. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, the person shall be responsible for obtaining the child abuse identification and reporting training. The person may complete the initial or additional training as part of a continuing education program required under chapter 258A or may complete the training as part of a training program offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

87 Acts, ch 153, §3 HF 412
Subsection 1, paragraph b amended

232.70 Reporting procedure.

1. Each report made by a mandatory reporter, as defined in section 232.69, subsection 1, shall be made both orally and in writing. Each report made by a permissive reporter, as defined in section 232.69, subsection 2, may be oral, written, or both.

2. The oral report shall be made by telephone or otherwise to the department of human services. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

3. The written report shall be made to the department of human services within forty-eight hours after such oral report.

4. The department of human services shall:

a. Immediately, upon receipt of an oral report, make a determination as to whether the report constitutes an allegation of child abuse as defined in section 232.68;

b. Make a report to the central registry if the oral report has been determined to constitute a child abuse allegation;

c. Forward a copy of the written report to the registry; and

d. Notify the appropriate county attorney of the receipt of any report.

5. The oral and written reports shall contain the following information, or as much thereof as the person making the report is able to furnish:

a. The names and home address of the child and the child's parents or other persons believed to be responsible for the child's care;

b. The child's present whereabouts if not the same as the parent's or other person's home address;

c. The child's age;

d. The nature and extent of the child's injuries, including any evidence of previous injuries;

e. The name, age and condition of other children in the same home;

f. Any other information which the person making the report believes might be helpful in establishing the cause of the injury to the child, the identity of the person or persons responsible for the injury, or in providing assistance to the child; and

g. The name and address of the person making the report.

6. A report made by a permissive reporter, as defined in section 232.69, subsection 2, shall be regarded as a report pursuant to this chapter whether or not the report contains all of the information required by this section and may be made to the department of human services, county attorney, or law enforcement agency. If the report is made to any agency other than the department of human services, such agency shall promptly refer the report to the department of human services.

87 Acts, ch 153, §4 HF 412
Subsection 4 amended

232.71 Duties of the department upon receipt of report.

1. Whenever a report is determined to constitute a child abuse allegation, the department of human services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report.

2. The investigation shall include:

a. Identification of the nature, extent and cause of the injuries, if any, to the child named in the report;

b. The identification of the person or persons responsible therefor;

c. The name, age and condition of other children in the same home as the child named in the report;

d. An evaluation of the home environment and relationship of the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

3. The investigation may with the consent of the parent or guardian include a visit to the home of the child or with the consent of the administrator of a facility include a visit to the facility providing care to the child named in the report and examination of the child. If permission to enter the home or facility and to examine the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the investigation to enter the home or facility and examine the child. The department may utilize a multidisciplinary team in investigations of child abuse involving employees or agents of a facility providing care for a child.

4. Based on an investigation of alleged child abuse by an employee of a facility providing care to a child, the department shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:

a. A violation of facility policy noted in the investigation.

b. An instance in which facility policy or lack of facility policy may have contributed to the alleged child abuse.

c. An instance in which general practice in the facility appears to differ from the facility's written policy.

The licensing authority, the governing body, and the administrator in charge of the facility shall take any lawful action which may be necessary or advisable to protect children residing in the facility.

5. The department of human services may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in the state, and any mandatory reporter shall cooperate and assist in the investigation upon the request of the department of human services. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child.

6. Administrators of all public and nonpublic schools subject to the authority of the department of education shall cooperate with the investigators by providing confidential access to the child named in the report, and to other children alleged to have relevant information, for the purposes of interviews. The investigators shall determine who shall be present at the interviews. The school administrators are under no duty to report the investigation or interview to the child's parent or guardian. The immunity granted by section 232.73 applies to such administrators and their school districts.

7. The department, upon completion of its investigation, shall make a preliminary report of its investigation as required by subsection 2. A copy of this report shall be transmitted to juvenile court within ninety-six hours after the department initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten working days of the receipt of the abuse report, unless the juvenile court grants an extension of time for good cause shown. The department shall notify a subject of the report of the result of the investigation, of the subject's right to correct the information pursuant to section 235A.19, and of the procedures to correct the information. The juvenile court shall notify the registry of any action it takes with respect to a suspected case of child abuse.

8. The department of human services shall transmit a copy of the report of its investigation, including actions taken or contemplated, to the registry. The department of human services shall make periodic follow-up reports thereafter in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the handling of a suspected case of child abuse.

9. The department of human services shall also transmit a copy of the report of its investigation to the county attorney. The county attorney shall notify the registry of any actions or contemplated actions with respect to a suspected case of child abuse so that the registry is kept up-to-date and fully informed concerning the handling of such a case.

10. Based on the investigation conducted pursuant to this section, the department shall offer to the family of any child believed to be the victim of abuse such services as appear appropriate for either the child, the family, or both, if it is explained that the department has no legal authority to compel such family to receive such services.

11. If, upon completion of the investigation, the department of human services determines that the best interests of the child require juvenile court action, the department shall take the appropriate action to initiate such action under this chapter. The county attorney shall assist the county department of human services in the preparation of the necessary papers to initiate such action and shall appear and represent the department at all juvenile court proceedings.

12. The department of human services shall assist the juvenile court or district court during all stages of court proceedings involving a suspected child abuse case in accordance with the purposes of this chapter.

13. The department of human services shall provide for or arrange for and monitor rehabilitative services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court.

14. In every case involving child abuse which results in a child protective judicial proceeding, whether or not the proceeding arises under this chapter, a guardian ad litem shall be appointed by the court to represent the child in the proceedings. Before a guardian ad litem is appointed pursuant to this section, the court shall require the person responsible for the care of the child to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the person responsible for the care of the child is able to bear the cost of the guardian ad litem, the court shall so order. In cases

where the person responsible for the care of the child is unable to bear the cost of the guardian ad litem, the expense shall be paid out of the county treasury.

15. If a fourth report is received from the same person who made three earlier unfounded reports which identified the same child as the abused child and the same person responsible for the child as the alleged abuser, the department may determine that the report is again unfounded due to the report's spurious or frivolous nature and may in its discretion terminate its investigation.

87 Acts, ch 153, §5 HF 412
Subsection 1 amended

232.74 Evidence not privileged or excluded.

Sections 622.9 and 622.10 and any other statute or rule of evidence which excludes or makes privileged the testimony of a husband or wife against the other or the testimony of a health practitioner or mental health professional as to confidential communications, do not apply to evidence regarding a child's injuries or the cause of the injuries in any judicial proceeding, civil or criminal, resulting from a report pursuant to this chapter or relating to the subject matter of such a report.

87 Acts, ch 153, §6 HF 412
Section amended

232.75 Sanctions.

1. Any person, official, agency or institution, required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.

2. Any person, official, agency or institution, required by section 232.69 to report a suspected case of child abuse who knowingly fails to do so is civilly liable for the damages proximately caused by such failure.

3. A person who reports or causes to be reported to the department of human services false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

87 Acts, ch 13, §2 SF 269
Subsection 3 affirmed and reenacted effective April 2, 1987; legislative findings; 87 Acts, ch 13, §1, 8 SF 269

232.89 Right to and appointment of counsel.

1. Upon the filing of a petition the parent, guardian or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable to employ counsel, the court shall appoint counsel.

2. Upon the filing of a petition, the court shall appoint counsel and a guardian ad litem for the child identified in the petition as a party to the proceedings. Counsel shall be appointed as follows:

a. If the child is represented by counsel and the court determines there is a conflict of interest between the child and the child's parent, guardian or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child, who shall be compensated pursuant to the provisions of subsection 3.

b. If the child is not represented by counsel, the court shall either order the parent, guardian or custodian to retain counsel for the child or shall appoint counsel for the child, who shall be compensated pursuant to the provisions of subsection 3.

3. The court shall determine, after giving the parent, guardian or custodian an opportunity to be heard, whether such person has the ability to pay in whole or in part for counsel appointed for the child. If the court determines that such person possesses sufficient financial ability, the court shall then consult with the department of human services, the juvenile probation office or other authorized agency or individual regarding the likelihood of impairment of the relationship

between the child and the child's parent, guardian or custodian as a result of ordering the parent, guardian or custodian to pay for the child's counsel. If impairment is deemed unlikely, the court shall order that person to pay such sums as the court finds appropriate in the manner and to whom the court directs. If the person so ordered fails to comply with the order without good reason, the court shall enter judgment against the person. If impairment is deemed likely or if the court determines that the parent, guardian or custodian cannot pay any part of the expenses of counsel appointed to represent the child, counsel shall be reimbursed pursuant to section 232.141, subsection 1, paragraph "d".

4. The same person may serve both as the child's counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interest of the child as guardian ad litem.

5. The court may appoint a special advocate, as defined in section 232.2, subsection 9A, to act as guardian ad litem. The court appointed special advocate shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child. The court appointed special advocate shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. However, the court appointed special advocate shall file reports to the court as required by the court.

87 Acts, ch 121, §4 HF 515
NEW subsection 5

232.90 Duties of county attorney.

The county attorney shall represent the state in proceedings arising from a petition filed under this division and shall present evidence in support of the petition. The county attorney shall be present at proceedings initiated by petition under this division filed by an intake officer or the county attorney, or if a party to the proceedings contests the proceedings, or if the court determines there is a conflict of interest between the child and the child's parent, guardian, or custodian or if there are contested issues before the court.

87 Acts, ch 151, §1 HF 588
Section amended

232.95 Hearing concerning temporary removal.

1. At any time after the petition is filed any person who may file a petition under section 232.87 may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from home. Where the child is in the custody of a person other than the child's parent, guardian or custodian as the result of action taken pursuant to section 232.78 or 232.79, the court shall hold a hearing to determine whether the temporary removal should be continued.

2. Upon such hearing, the court may:

a. Remove the child from home and place the child in a shelter care facility or in the custody of a suitable person or agency pending a final order of disposition if the court finds that substantial evidence exists to believe that removal is necessary to avoid imminent risk to the child's life or health.

If removal is ordered, the order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation therein would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

b. Release the child to the child's parent, guardian or custodian pending a final order of disposition.

c. Authorize a physician or hospital to provide medical or surgical procedures if such procedures are necessary to safeguard the child's life or health.

3. The court shall make and file written findings as to the grounds for granting or denying an application under this section.

4. If the court orders the child removed from the home pursuant to subsection 2, paragraph "a", the court shall hold a hearing to review the removal order within six months unless a dispositional hearing pursuant to section 232.99 has been held.

87 Acts, ch 159, §2 HF 567
NEW subsection 4

232.96 Adjudicatory hearing.

1. The court shall hear and adjudicate cases involving a petition alleging a child to be a child in need of assistance.

2. The state shall have the burden of proving the allegations by clear and convincing evidence.

3. Only evidence which is admissible under the rules of evidence applicable to the trial of civil cases shall be admitted, except as otherwise provided by this section.

4. A report made to the department of human services pursuant to chapter 235A shall be admissible in evidence, but such a report shall not alone be sufficient to support a finding that the child is a child in need of assistance unless the attorneys for the child and the parents consent to such a finding.

5. Neither the privilege attaching to confidential communications between a health practitioner or mental health professional and patient nor the prohibition upon admissibility of communications between husband and wife shall be ground for excluding evidence at an adjudicatory hearing.

6. A report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker's lack of personal knowledge, may be proved to affect its weight.

7. After the hearing is concluded, the court shall make and file written findings as to the truth of allegations of the petition and as to whether the child is a child in need of assistance.

8. If the court concludes facts sufficient to sustain a petition have not been established by clear and convincing evidence or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.

9. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance.

10. If the court enters an order adjudicating the child to be a child in need of assistance, the court, if it has not previously done so, may issue an order authorizing temporary removal of the child from the child's home as set forth in section 232.95, subsection 2, paragraph "a", pending a final order of disposition.

87 Acts, ch 153, §7 HF 412
Subsections 4 and 5 amended

232.102 Transfer of legal custody of juvenile and placement.

1. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

a. A relative or other suitable person.

b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

c. The department of human services.

2. After a dispositional hearing and upon the request of the department, the court may enter an order appointing the department as the guardian of an unaccompanied refugee minor or of a child without parent or guardian.

3. After a dispositional hearing and upon written findings of fact based upon evidence in the record that an alternative placement set forth in subsection 1, paragraph "b" has previously been made and is not appropriate the court may enter an order transferring the guardianship of the court for the purposes of subsection 7, to the commissioner of human services for the purposes of placement in the Iowa Juvenile Home at Toledo.

4. Whenever possible the court should permit the child to remain at home with the child's parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

a. The child cannot be protected from physical abuse without transfer of custody; or

b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

The order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation therein would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home.

5. The child shall not be placed in the state training school.

6. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a relative or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian or custodian in order to enable them to resume custody of the child.

7. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency responsible for the placement of the child shall consider placing the child in the same licensed foster care facility.

a. The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing.

b. Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing.

c. For purposes of this subsection, a hearing held pursuant to section 232.103 or 232.104 satisfies the requirements for initial or subsequent dispositional review.

87 Acts, ch 159, §3 HF 567
Subsection 7 amended

232.104 Permanency hearing.

1. If custody of a child has been transferred for placement pursuant to section 232.102 for a period of twelve months, or if the prior legal custodian of a child has abandoned efforts to regain custody of the child, the court shall, on its own motion, or upon application by any interested party, hold a hearing to consider the issue of the establishment of permanency for the child.

Such a permanency hearing may be held concurrently with a hearing to review, modify, substitute, vacate, or terminate a dispositional order. Reasonable notice of a permanency hearing in a case of juvenile delinquency shall be provided pursuant to section 232.37. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court. Upon completion of the hearing the court shall enter written findings and make a determination based upon the permanency plan which will best serve the child's individual interests at that time.

2. After a permanency hearing the court shall do one of the following:

a. Enter an order pursuant to section 232.102 to return the child to the child's home.

b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

d. Enter an order, pursuant to findings required by subsection 3, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) Order long-term foster care placement for the child in a licensed foster care home or facility.

3. Prior to entering a permanency order pursuant to subsection 2, paragraph "d", convincing evidence must exist showing that all of the following apply:

a. A termination of the parent-child relationship would not be in the best interest of the child.

b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.

c. The child cannot be returned to the child's home.

4. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child.

5. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence, that returning the child to such custody would be in the best interest of the child.

6. Following the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When such order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the permanency hearing or the last review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

87 Acts, ch 159, §4 HF 567
NEW section

232.105 through 232.108 Reserved.

232.116 Grounds for termination.

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

b. The court finds that there is clear and convincing evidence that the child has been abandoned.

c. The court finds that all of the following have occurred:

(1) One or both parents have physically or sexually abused the child.

(2) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(3) There is clear and convincing evidence that the parents were offered but refused services or failed to cooperate to correct the situation which led to the abuse or that the parents had received services to correct the situation which led to the abuse but the services did not correct the abusive situation.

d. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 and the placement has lasted for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

(4) There is clear and convincing evidence that the parents have not maintained contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

e. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The custody of the child has been transferred from the child's parents for placement pursuant to section 232.102 for at least twelve of the last eighteen months.

(3) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102.

f. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the child cannot be returned to or placed in the custody of the child's parents.

(4) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(5) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the physical, mental, and emotional condition and needs of the child. Such consideration may include any of the following:

a. Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

b. For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

b. The child is over ten years of age and objects to the termination.

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

87 Acts, ch 159, §6 HF 567
Section amended

232.117 Termination—findings—disposition.

1. After the hearing is concluded the court shall make and file written findings.

2. If the court concludes that facts sufficient to terminate parental rights have not been established by clear and convincing evidence, the court shall dismiss the petition.

3. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated. If the court terminates the parental rights of the child's natural or adoptive parents, the court shall transfer the guardianship and custody of the child to one of the following:

a. The department of human services.

b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

c. A relative or other suitable person.

4. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of sections 232.100, 232.101 or 232.102.

5. If the court orders the termination of parental rights and transfers guardianship and custody under subsection 3, the department of human services or the agency responsible for the placement shall submit a case permanency plan to the court and shall make every effort to establish a stable placement for the child by adoption or other permanent placement.

6. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has not been placed for adoption shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed six months after the date of the termination of parental rights or the last placement review hearing.

7. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has been placed for adoption and whose adoption has not been finalized shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed twelve months after the date of the adoptive placement or the last placement review hearing.

87 Acts, ch 159, §5, 7 HF 567
 Subsection 5 amended
 NEW subsections 6 and 7

232.119 Adoption exchange established.

1. The purpose of this section is to facilitate the placement of all children in Iowa who are legally available for adoption through the establishment of an adoption exchange to help find adoptive homes for these children.

2. An adoption information exchange is established within the department to be operated by the department or by an individual or agency under contract with the department.

a. All special needs children under state guardianship shall be registered on the adoption exchange within sixty days of the termination of parental rights pursuant to section 232.117 or 600A.9 and assignment of guardianship to the commissioner.

b. Prospective adoptive families requesting a special needs child shall be registered on the adoption exchange upon receipt of an approved home study.

3. To register a child on the exchange, the adoption worker or agency shall submit all pertinent information concerning the child, a brief description and photo of the child, and other information needed to be compatible with the national adoption exchange. The exchange shall include a photo-listing book which shall be updated regularly. The adoption worker or agency which places a child on the exchange shall provide updated registration information within ten working days after a change in the information previously submitted occurs.

4. The exchange shall include a matching service for children registered or listed in the adoption photo-listing book and prospective adoptive families listed on the exchange. A child shall be registered with the national exchange if the child has not been placed for adoption after three months on the exchange established pursuant to this section.

5. A request to defer registering the child on the exchange shall be granted if any of the following conditions exist:

- a. The child is in an adoptive placement.
- b. The child's foster parents or another person with a significant relationship is being considered as the adoptive family.
- c. The child needs diagnostic study or testing to clarify the child's problem and provide an adequate description of the problem.
- d. The child is currently hospitalized and receiving medical care that does not permit adoptive placement.
- e. The child is fourteen years of age or older and will not consent to an adoption plan and the consequences of not being adopted have been explained to the child.

Upon receipt of a valid written request for deferral pursuant to paragraphs "a" through "e", the exchange shall grant the deferral, except that a deferral based on paragraph "b" or "c" shall be granted for no more than a one-time, ninety-day period.

87 Acts, ch 159, §8 HF 567
NEW section

232.120 and 232.121 Reserved.

232.126 Appointment of counsel and guardian ad litem.

The court shall appoint counsel or a guardian ad litem to represent the interests of the child at the hearing to determine whether the family is a family in need of assistance unless the child already has such counsel or guardian. The court shall appoint counsel for the parent, guardian or custodian if that person desires but is financially unable to employ counsel.

The court may appoint a special advocate, as defined in section 232.2, subsection 9A, to act as guardian ad litem. The court appointed special advocate shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child. The court appointed special advocate shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. However, the court appointed special advocate shall file reports to the court as required by the court.

87 Acts, ch 121, §5 HF 515
NEW unnumbered paragraph 2

232.141 Expenses charged to county.

1. The following expenses upon certification of the judge to the board of supervisors or upon such other authorization as provided by law are a charge upon the county in which the proceedings are held to the extent provided in subsection 8.

- a. The fees and mileage of witnesses and the expenses and mileage of officers serving notices and subpoenas.
- b. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem.

2. The following expenses upon certification of the judge to the board of supervisors or upon such other authorization as provided by law are a charge upon the county identified pursuant to subsection 4 to the extent provided in subsection 8:

- a. The expenses of transporting a child to a place designated by a child placing agency for the care of a child if the court transfers legal custody to a child placing agency.
- b. The expense of transporting a child to or from a place designated by the court.
- c. The expense of treatment or care ordered by the court under an authority of subsection 3.

3. If legal custody of a minor is transferred by the court, if the minor is placed by the court with someone other than the parents, if a minor is given physical or mental examinations or treatment under order of the court, or if a minor is given physical or mental examination or treatment with the consent of the parent, guardian, or legal custodian relating to a child abuse investigation, and no provision is otherwise made by law for payment for the care, examination, or treatment of the minor, the costs shall be charged upon the funds of the county identified pursuant to subsection 4.

4. The expenses certified under subsection 2 that are the result of a court proceeding shall be a charge upon the county in which the proceedings are held. The expenses certified under subsection 2 that are the result of a child abuse investigation and not a court proceeding shall be a charge upon the county in which the child resides.

5. For court-ordered care, examination, and treatment authorized by this section, except where the parent-child relationship is terminated, the court may inquire into the ability of the parents to support the minor and after giving the parents a reasonable opportunity to be heard may order the parents to pay in the manner and to whom the court may direct, such sums as will cover in whole or in part the cost of care, examination, or treatment of the minor. An order entered under this section shall not obligate a parent paying child support under a custody decree, except that any part of such a monthly support payment may be used to satisfy the obligations imposed by an order entered under this section. If the parents fail to pay the sum without good reason, the parents may be proceeded against for contempt or the court may inform the county attorney who shall proceed against the parents to collect the unpaid sums or both. Any such sums ordered by the court shall be a judgment against each of the parents and a lien as provided in section 624.23. If all or any part of the sums that the parents are ordered to pay is subsequently paid by the county, the judgment and lien shall be against each of the parents in favor of the county to the extent of the county's payments.

6. Upon the issuance of a court order for the care, examination, or treatment of a minor, the court shall furnish a copy of the court order to all providers of the care, examination, or treatment.

7. The county charged with the cost and expenses under subsection 1 or pursuant to subsection 4 may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under authority of this section shall be settled in accordance with sections 252.22 and 252.23.

8. Costs incurred under this section shall be paid as follows:

a. The costs incurred under the provisions of section 232.52 of prior Codes by each county for the fiscal years beginning July 1, 1975, 1976 and 1977 shall be averaged. The average cost for each county shall be that county's base cost for the first fiscal year after July 1, 1979.

b. Each county shall be required to pay for the first fiscal year after July 1, 1979 an amount equal to its base cost plus an amount equal to the percentage rate of change in the consumer price index as tabulated by the bureau of labor statistics for the current fiscal year times the base cost.

c. A county's base cost for a fiscal year plus the percentage rate of change amount as computed in paragraph "b" shall become that county's base cost for the succeeding fiscal year. The amount to be paid in the succeeding year by the county shall be computed as provided in paragraph "b".

d. The total amounts to be paid by a county shall be computed as provided in paragraphs "a", "b", and "c". For the fiscal year beginning July 1, 1987, and

subsequent fiscal years, each county's base cost shall be divided into two separate base costs, representing the costs of witness and mileage fees and attorney fees paid pursuant to subsection 1, paragraphs "a" and "b", to be reimbursed by the judicial department, and representing the costs of transportation and treatment or care paid pursuant to subsection 2, paragraphs "a", "b", and "c", to be reimbursed by the department of human services. The ratio of the separate bases for each county shall equal the ratio of expenses identified in subsection 1 to the expenses identified in subsection 2 incurred during the fiscal year beginning July 1, 1986 and ending June 30, 1987, and paid by either the county or the state. Costs incurred under this section which are not paid by the county under paragraphs "a", "b" and "c" shall be paid by the state. The counties shall apply for reimbursement to the judicial department pursuant to rules adopted by the judicial department. The counties shall apply for reimbursement to the department of human services pursuant to rules adopted by the department.

87 Acts, ch 152, §1 HF 684

Administration of juvenile attorney and witness fees transferred to judicial department; 87 Acts, ch 234, §307 HF 671

Section amended

CHAPTER 234

CHILD AND FAMILY SERVICES

Adolescent pregnancy prevention and service grants;
two-year pilot program; 87 Acts, ch 233, §431; 87 Acts,
ch 234, §203 (1) (i)

CHAPTER 235A

ABUSE OF CHILDREN

235A.1 Child abuse prevention program.

1. A program for the prevention of child abuse is established within the state department of human services. Any moneys appropriated by the general assembly for child abuse prevention shall be used by the department of human services solely for the purposes of child abuse prevention and shall not be expended for treatment or other service delivery programs regularly maintained by the department. Moneys appropriated for child abuse prevention shall be used by the department through contract with an agency or organization which shall administer the funds with maximum use of voluntary administrative services for the following:

a. Matching federal funds to purchase services relating to community-based programs for the prevention of child abuse and neglect.

b. Funding the establishment or expansion of community-based prevention projects or educational programs for the prevention of child abuse and neglect.

c. To study and evaluate community-based prevention projects and educational programs for the problems of families and children.

Funds for the programs or projects shall be applied for and received by a community-based volunteer coalition or council.

2. The commissioner of human services may accept grants, gifts, and bequests from any source for the purposes designated in subsection 1. The commissioner shall remit funds so received to the treasurer of state who shall deposit them in the general fund of the state for the use of the child abuse prevention program.

3. The child abuse prevention program advisory council is created consisting of five members appointed by and serving at the pleasure of the governor. Two members shall be appointed on the basis of expertise in the area of child abuse and neglect, and three members shall be private citizens. The council shall select its own chairperson. Members of the council are entitled to receive actual expenses

incurred in the discharge of their duties. A member of the council may also be eligible to receive an additional expense allowance as provided in section 7E.6.

4. The advisory council shall:

a. Advise the commissioner of human services and the director of the division of the department of human services responsible for child and family programs regarding expenditures of funds received for the child abuse prevention program.

b. Review the implementation and effectiveness of legislation and administrative rules concerning the child abuse prevention program.

c. Recommend changes in legislation and administrative rules to the general assembly and the appropriate administrative officials.

d. Require reports from state agencies and other entities as necessary to perform its duties.

e. Receive and review complaints from the public concerning the operation and management of the child abuse prevention program.

f. Approve grant proposals.

87 Acts, ch 163, §8 HF 412
Subsection 3 amended

235A.13 Definitions.

As used in sections 235A.13 to 235A.23, unless the context otherwise requires:

1. "*Child abuse information*" means any or all of the following data maintained by the department in a manual or automated data storage system and individually identified:

a. Report data.

b. Investigation data.

c. Disposition data.

2. "*Report data*" means information pertaining to any occasion involving or reasonably believed to involve child abuse, including:

a. The name and address of the child and the child's parents or other persons responsible for the child's care.

b. The age of the child.

c. The nature and extent of the injury, including evidence of any previous injury.

d. Any other information believed to be helpful in establishing the cause of the injury and the identity of the person or persons responsible therefor.

3. "*Investigation data*" means information pertaining to the evaluation of report data, including:

a. Additional information as to the nature, extent and cause of the injury, and the identity of persons responsible therefor.

b. The names and conditions of other children in the home.

c. The child's home environment and relationships with parents or others responsible for the child's care.

4. "*Disposition data*" means information pertaining to an opinion or decision as to the occurrence of child abuse, including:

a. Any intermediate or ultimate opinion or decision reached by investigative personnel.

b. Any opinion or decision reached in the course of judicial proceedings.

c. The present status of any case.

5. "*Confidentiality*" means the withholding of information from any manner of communication, public or private.

6. "*Expungement*" means the process of destroying child abuse information.

7. "*Individually identified*" means any report, investigation or disposition data which names the person or persons responsible or believed responsible for the child abuse.

8. "*Sealing*" means the process of removing child abuse information from authorized access as provided by this chapter.

9. "Multidisciplinary team" means a group of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of child abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, child development, education, law, juvenile probation, or law enforcement, or a group established pursuant to section 235B.1, subsection 5, paragraph "a".

87 Acts, ch 153, §9 HF 412; 87 Acts, ch 182, §1 HF 660
 Subsection 1, unnumbered paragraph 1 amended
 Subsection 9 amended

235A.15 Authorized access.

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by subsection 2 and subsection 3.

2. Access to child abuse information other than unfounded child abuse information is authorized only to the following persons or entities:

a. Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

b. Persons involved in an investigation of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the investigation of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an investigation of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to the mandatory reporter who reported the child abuse.

c. Individuals, agencies, or facilities providing care to a child as follows:

(1) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the child abuse under section 232.71, subsection 4.

(2) To an authorized person or agency responsible for the care or supervision of a child named in a report as a victim of abuse or a person named in a report as having abused a child, if the juvenile court or registry deems access to child abuse information by such person or agency to be necessary.

(3) To an employee or agent of the department of human services responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(4) To an employee of the department of human services responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

d. Relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report.

(2) To a district court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving child abuse.

(3) To a court or administrative agency hearing an appeal for correction of child abuse information as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of child abuse information as provided in section 235A.19.

e. Others as follows:

(1) To a person conducting bona fide research on child abuse, but without information identifying individuals named in a child abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the information.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) To the department of public safety for the sole purpose of the filing of a claim for reparation pursuant to section 910A.5A and section 912.4, subsections 3 through 5.

(4) To a legally constituted child protection agency of another state which is investigating or treating a child named in a report as having been abused or to a public or licensed child placing agency of another state responsible for an adoptive placement.

(5) To the attorney for the department of human services who is responsible for representing the department.

(6) To the foster care review boards created pursuant to sections 237.16 and 237.19.

3. Access to unfounded child abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2) and (5), and paragraph "c", subparagraph (2).

87 Acts, ch 153, §10, 11 HF 412
Subsection 2 stricken and rewritten
Subsection 3 amended

235A.16 Requests for child abuse information.

1. Requests for child abuse information shall be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. Requests for child abuse information may be made orally by telephone where a person making such a request believes that the information is needed immediately and where information sufficient to demonstrate authorized access is provided. In the event that a request is made orally by telephone, a written request form shall nevertheless be filed within seventy-two hours.

3. Subsections 1 and 2 do not apply to child abuse information that is disseminated to an employee of the department of human services, to a juvenile court, or to the attorney representing the department as authorized by section 235A.15.

87 Acts, ch 153, §12 HF 412
NEW subsection 3

235A.17 Redissemination of child abuse information.

1. A person, agency or other recipient of child abuse information authorized to receive such information shall not disseminate such information, except that dissemination shall be permitted when all of the following conditions apply:

a. The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.

b. The person to whom such information would be redisseminated would have independent access to the same information under section 235A.15.

c. A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.

d. The written record is forwarded to the registry within thirty days of the redissemination.

2. The department of human services may notify orally the mandatory reporter in an individual child abuse case of the results of the case investigation and of the confidentiality provisions of sections 235A.15 and 235A.21. The department shall subsequently transmit a written notice to the mandatory reporter of the results and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in section 235A.18.

87 Acts, ch 153, §13 HF 412
Section amended

235A.23 Registry reports.

1. The registry may compile statistics, conduct research, and issue reports on child abuse, provided identifying details of the subject of child abuse reports are deleted from any report issued.

2. The registry shall issue an annual report on its administrative operation, including information as to the number of requests for child abuse data, the proportion of requests attributable to each type of authorized access, the frequency and nature of irregularities, and other pertinent matters.

87 Acts, ch 153, §14 HF 412
Subsection 1 amended

CHAPTER 235B

ADULT ABUSE

Legislative fiscal bureau to monitor reporting, investigations, workload and performance of personnel, and report annually by February 1; elder affairs, human services, and inspections and appeals departments to cooperate; 87 Acts, ch 182, §11 HF 660

235B.1 Adult abuse services.

1. As used in this chapter, "*dependent adult abuse*" means:

a. Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(1) Physical injury to or unreasonable confinement or unreasonable punishment of a dependent adult.

(2) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(3) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(4) The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a dependent adult's life or health.

b. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

2. Dependent adult abuse does not include:

a. Depriving a dependent adult of medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment. However, this provision does not preclude a court from ordering that medical service be provided to the dependent adult if the dependent adult's health requires it.

b. The withholding and withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding and withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next-of-kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633.

3. "*Dependent adult*" means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

4. "*Caretaker*" means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

5. The department of human services shall operate a program relating to the providing of services in cases of dependent adult abuse. The program shall emphasize the reporting and evaluation of dependent adult abuse of an adult who is unable to protect the adult's own interests or unable to perform or obtain essential services. The program shall include:

a. The establishment of multidisciplinary teams to provide leadership at the local and district levels in the delivery of services to victims of dependent adult abuse. A team shall include a membership of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforcement, and other disciplines relative to dependent adults. Members of the team shall include, but are not limited to, persons representing the area agencies on aging, county attorneys, health care providers, and others involved in advocating or providing services for dependent adults.

b. Provisions for information sharing and case consultation among service providers, care providers, and victims of dependent adult abuse.

c. Procedures for referral of cases among service providers, including the referral of victims of dependent adult abuse residing in licensed health care facilities.

6. a. A health practitioner, as defined in section 232.68, who examines, attends, or treats a dependent adult and who reasonably believes the dependent adult has suffered dependent adult abuse, shall report the suspected abuse to the department of human services. If the health practitioner examines, attends, or treats the dependent adult as a member of the staff of a hospital or similar institution, the health practitioner shall immediately notify the person in charge of the institution or the person's designated agent, and the person in charge or the designated agent shall make the report.

A self-employed social worker, a social worker under the jurisdiction of the department of human services, a social worker employed by a public or private agency or institution, or by a public or private health care facility as defined in section 135C.1, a certified psychologist, a member of the staff of a mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in section 135C.1, or a peace officer, who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered adult

abuse shall report the suspected abuse to the department of human services. An in-home homemaker-home health aide or an individual employed as an outreach person shall report suspected adult abuse to the department of human services. If a person is required to report under this section as a member of the staff or employee of a public or private institution, agency, or facility, the person shall immediately notify the person in charge of the institution, agency, or facility, or the person's designated agent, and the person in charge or the designated agent shall make the report.

Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services.

The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports pursuant to sections 235A.12 through 235A.24 by expanding the central registry for child abuse to include reports of dependent adult abuse. The department shall evaluate the reports expeditiously. However, the state department of inspections and appeals is solely responsible for the evaluation and disposition of adult abuse cases within health care facilities and shall inform the department of human services of such evaluations and dispositions.

b. The department of human services shall inform the appropriate county attorneys of any reports. County attorneys, law enforcement agencies, multidisciplinary teams, and social services agencies in the state shall cooperate and assist in the evaluation upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

c. Upon a showing of probable cause that a dependent adult has been abused, a district court may authorize a person, authorized by the department to make an evaluation, to enter the residence of, and to examine the dependent adult.

7. a. If, upon completion of the evaluation or upon referral from the Iowa department of public health, the department of human services determines that the best interests of the dependent adult require district court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

b. The department shall assist the district court during all stages of court proceedings involving a suspected case of adult abuse.

c. In every case involving adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this section, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

8. The department of human services shall complete an assessment of needed services and shall make appropriate referrals to services. The department may

provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

9. A person participating in good faith in reporting or cooperating or assisting the department of human services in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participation in good faith in a judicial proceeding resulting from the report or assistance or relating to the subject matter of the report or assistance.

It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 6, cooperating or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or assistance based solely upon the person's reporting or participation relative to the instance of dependent adult abuse. A person or employer found in violation of this paragraph shall, upon conviction, be guilty of a simple misdemeanor.

10. A person, institution, agency, or facility required by this section to report a suspected case of a dependent adult abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor. A person, institution, agency, or facility required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so is civilly liable for the damages proximately caused by the failure.

11. The department of inspections and appeals shall adopt rules which require licensed health care facilities to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of abuse and prior to the completion of an investigation of the allegation.

87 Acts, ch 182, §2-8 HF 660

1987 amendment to subsection 6, paragraph a, takes effect July 1, 1988; 87 Acts, ch 182, §12 HF 660

Subsection 1 amended

NEW subsections 3 and 4 and former subsections 3-7 renumbered as 5-9

Subsection 5 amended

Subsection 6, paragraphs a and b amended

Subsection 9, NEW unnumbered paragraph 2

NEW subsections 10 and 11

235B.2 Information, education, and training programs.

1. The department of elder affairs, in cooperation with the department of human services, shall conduct a public information and education program. The elements and goals of the program include but are not limited to:

a. Informing the public regarding the laws governing dependent adult abuse and the reporting requirements for dependent adult abuse.

b. Providing care givers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the care giver and dependent adult relationship.

c. Changing public attitudes regarding the role of a dependent adult in society.

2. The department of human services, in cooperation with the department of elder affairs and the department of inspections and appeals, shall institute a program of education and training for persons, including members of provider groups and family members, who may be in contact with dependent adult abuse. The program shall include but is not limited to instruction regarding recognition of dependent adult abuse and the procedure for the reporting of suspected abuse.

3. The content of the continuing education required pursuant to chapter 258A for a licensed professional providing care or service to a dependent adult shall include, but is not limited to, the responsibilities, obligations, powers, and duties of a person regarding the reporting of suspected dependent adult abuse, and training to aid the professional in identifying instances of dependent adult abuse.

4. The department of inspections and appeals shall provide training to investigators regarding the collection and preservation of evidence in the case of suspected dependent adult abuse.

87 Acts, ch 182, §9 HF 660
NEW section

CHAPTER 236

DOMESTIC ABUSE

236.2 Definitions.

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. "*Domestic abuse*" means committing assault as defined in section 708.1 under either of the following circumstances:

a. The assault is between family or household members who resided together at the time of the assault.

b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.

2. "*Family or household members*" means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under eighteen.

3. "*Emergency shelter services*" include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

4. "*Support services*" include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

5. "*Department*" means the department of human services.

6. "*Commissioner*" means the commissioner of human services.

87 Acts, ch 154, §1 HF 591
Subsection 1, paragraph b amended

236.5 Disposition.

Upon a finding that the defendant has engaged in domestic abuse:

1. The court may order that the plaintiff and the defendant receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.

2. The court may grant a protection order or approve a consent agreement which may contain but is not limited to any of the following provisions:

a. That the defendant cease domestic abuse of the plaintiff.

b. That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.

c. That the defendant stay away from the plaintiff's residence, school or place of employment.

d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children.

e. That the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.

An order for counseling, a protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing.

The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

3. An order or consent agreement under this section shall not affect title to real property.

4. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and law enforcement agencies having jurisdiction to enforce the order or consent agreement, and the twenty-four hour dispatcher for the law enforcement agencies. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and agencies previously notified.

87 Acts, ch 154, §2, 3 HF 591

Subsection 2, NEW unnumbered paragraph (at end of subsection)

Subsection 4 amended

236.8 Contempt.

The court may hold a party in contempt for a violation of an order or court-approved consent agreement entered under this chapter, for violation of a temporary or permanent protective order or order to vacate the homestead under chapter 598, or for violation of any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If held in contempt, the defendant shall serve a jail sentence which may be on weekends.

87 Acts, ch 154, §4 HF 591

Section amended

236.11 Duties of peace officer—magistrate.

A peace officer shall use every reasonable means to enforce an order or court-approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault. If a peace officer has probable cause to believe that a person has violated an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or any order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody. The magistrate shall make an initial preliminary determination whether there is probable cause to believe that an order or consent agreement existed and that the person taken into custody has violated its terms. The magistrate's decision shall be entered in the record.

If the magistrate finds probable cause, the magistrate shall order the person to appear before the court which issued the original order or approved the consent agreement, whichever was allegedly violated, at a specified time not less than three days nor more than ten days after the initial appearance under this section. The magistrate shall cause the original court to be notified of the contents of the magistrate's order.

A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that the peace officer acts in good faith, on probable cause,

and the officer's acts do not constitute a willful and wanton disregard for the rights or safety of another.

87 Acts, ch 154, §5 HF 591
Section amended

236.12 Prevention of further abuse—notification of rights—arrest—liability.

1. If a peace officer has reason to believe that domestic abuse has occurred, the officer shall use all reasonable means to prevent further abuse including but not limited to the following:

a. If requested, remaining on the scene as long as there is a danger to an abused person's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain on the scene, assisting the person in leaving the residence.

b. Assisting an abused person in obtaining medical treatment necessitated by an assault, including providing assistance to the abused person in obtaining transportation to the emergency room of the nearest hospital.

c. Providing an abused person with immediate and adequate notice of the person's rights. The notice shall consist of handing the person a copy of the following statement written in English and Spanish, asking the person to read the card and whether the person understands the rights:

"You have the right to ask the court for the following help on a temporary basis:

- (1) Keeping your attacker away from you, your home and your place of work.
- (2) The right to stay at your home without interference from your attacker.
- (3) Getting custody of children and obtaining support for yourself and your minor children if your attacker is legally required to provide such support.
- (4) Professional counseling.

You have the right to file criminal charges for threats, assaults, or other related crimes.

You have the right to seek restitution against your attacker for harm to yourself or your property.

If you are in need of medical treatment, you have the right to request that the officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and other affected parties can leave or until safety is otherwise ensured."

The notice shall also contain the telephone numbers of safe shelters, support groups, or crisis lines operating in the area.

2. a. A peace officer may, with or without a warrant, arrest a person under section 708.2, subsection 4, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which did not result in any injury to the alleged victim.

b. A peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 2, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which resulted in the alleged victim's suffering a bodily injury.

c. A peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 1, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed with the intent to inflict a serious injury.

d. A peace officer shall, with or without a warrant, arrest a person under section 708.2, subsection 3, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to

believe that a domestic abuse assault has been committed and that the alleged abuser used or displayed a dangerous weapon in connection with the assault.

3. A peace officer is not civilly or criminally liable for actions pursuant to this section taken in good faith.

87 Acts, ch 154, §6 HF 591
Subsection 2 stricken and rewritten

236.14 Initial appearance required —contact to be prohibited.

1. Notwithstanding chapters 804 and 805, a person taken into custody pursuant to section 236.11 or arrested pursuant to section 236.12 may be released on bail or otherwise only after an initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure or section 236.11, whichever is applicable.

2. When a person arrested for a domestic abuse assault, or taken into custody for contempt proceedings pursuant to section 236.11, is brought before a magistrate and the magistrate finds probable cause to believe that domestic abuse or a violation of an order or consent agreement has occurred and that the presence of the alleged abuser in the victim's residence poses a threat to the victim's safety, the magistrate shall enter an order which shall require the alleged abuser to have no contact with the alleged victim and to refrain from harassing the alleged victim or the victim's relatives in addition to any other conditions of release determined and imposed by the magistrate under section 811.2.

The court order shall contain the court's directives restricting the defendant from having contact with the victim or the victim's relatives.

The clerk of the court or other person designated by the court shall provide a copy of this order to the victim pursuant to chapter 910A. The order has force and effect until it is modified or terminated by subsequent court action in the contempt proceeding or the criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2.

Violation of this no-contact order is punishable by summary contempt proceedings.

87 Acts, ch 154, §7 HF 591
NEW section

CHAPTER 237

CHILD FOSTER CARE FACILITIES

237.1 Definitions.

As used in this chapter:

1. "Agency" means a person, as defined in section 4.1, subsection 13, which provides child foster care and which does not meet the definition of an individual in subsection 7.

2. "Child" means child as defined in section 234.1, subsection 4.

3. "Child foster care" means the provision of parental nurturing, including but not limited to the furnishing of food, lodging, training, education, supervision, treatment or other care, to a child on a full-time basis by a person other than a relative or guardian of the child, but does not include:

a. Care furnished by an individual person who receives the child of a personal friend as an occasional and personal guest in the individual person's home, free of charge and not as a business.

b. Care furnished by an individual person with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.

c. Care furnished by a private boarding school subject to approval by the state board of education pursuant to section 256.11.

d. Child day care furnished by a child care center, group day care home, or family day care home as defined in section 237A.1.

e. Care furnished in a hospital licensed under chapter 135B or care furnished in an intermediate care facility or a skilled nursing facility licensed under chapter 135C.

4. "Department" means the department of human services.

5. "Director" means the director of that division of the department designated by the commissioner of human services to administer this chapter or the director's designee.

6. "Facility" means the personnel, program, physical plant, and equipment of a licensee.

7. "Individual" means an individual person or a married couple who provides child foster care in a single-family home environment and which does not meet the definition of an agency in subsection 1.

8. "Licensee" means an individual or an agency licensed by the director under this chapter.

87 Acts, ch 44, §1 SF 273
Subsection 3, NEW paragraph e

237.4 License required—exceptions.

An individual or an agency, as defined in section 237.1, shall not provide child foster care unless the individual or agency obtains a license issued by the director under this chapter. However, a license is not required of the following:

1. An individual providing child foster care for a total of not more than twenty days in one calendar year.

2. A residential care facility licensed under chapter 135C which is approved for the care of children.

3. A hospital licensed under chapter 135B.

4. A health care facility licensed under chapter 135C.

5. A juvenile detention home or juvenile shelter care home approved under section 232.142.

6. An institution listed in section 218.1.

7. A facility licensed under chapter 125.

8. An individual providing child care as a babysitter at the request of a parent, guardian or relative having lawful custody of the child.

87 Acts, ch 44, §2 SF 273
NEW subsection 2 and former subsections 2-7 renumbered 3-8

237.5 License application and issuance—denial, suspension or revocation—provisional licenses.

1. An individual or an agency shall apply for a license by completing an application to the director upon forms furnished by the director. The director shall issue or reissue a license if the director determines that the applicant or licensee is or upon commencing operation will provide child foster care in compliance with this chapter. A license is valid for one year from the date of issuance. The license shall state on its face the name of the licensee, the type of facility, the particular premises for which the license is issued, and the number of children who may be cared for by the facility on the premises at one time. The license shall be posted in a conspicuous place in the physical plant of the facility, except that if the facility is in a single-family home the license may be kept where it is readily available for examination upon request.

2. The director, after notice and opportunity for an evidentiary hearing, may deny an application for a license, and may suspend or revoke a license, if the applicant or licensee violates this chapter or the rules promulgated pursuant to this chapter, or knowingly makes a false statement concerning a material fact or conceals a material fact on the license application or in a report regarding operation of the facility submitted to the director.

3. The director may issue a provisional license for not more than one year to a licensee whose facility does not meet the requirements of this chapter, if written plans to bring the facility into compliance with the applicable requirements are submitted to and approved by the director. The plans shall state a specific time when compliance will be achieved. Only one provisional license shall be issued for a facility by reason of the same deficiency.

87 Acts, ch 153, §15 HF 412
Subsection 2 amended

237.5A Foster parent training.

As a condition for initial licensure, each individual licensee shall complete twelve hours of foster parent training offered or approved by the department. Prior to annual renewal of licensure, each individual licensee shall also complete six hours of foster parent training. The training shall include but is not limited to physical care, education, learning disabilities, referral to and receipt of necessary professional services, behavioral assessment and modification, self-assessment, self-living skills, and biological parent contact. An individual licensee may complete the training as part of an approved training program offered by a public or private agency with expertise in the provision of child foster care or in related subject areas. The department shall adopt rules to implement and enforce this training requirement.

87 Acts, ch 117, §1 SF 290
Section amended

237.8 Personnel.

1. Personnel of a licensee shall be in good health and free of communicable disease, as certified by a physician as defined by section 135.1, subsection 5. In the case of an initial application for a license or a new employee of a licensee, the certification shall be based on a physical examination conducted no more than six months before employment begins, or before application for licensure. The director may annually require reasonable evidence of continuing good health and freedom from communicable disease of the personnel.

2. A person who has been convicted of a violation under a law of any state of a crime or a person with a record of founded child abuse shall not be licensed, be employed by a licensee, or reside in a licensed home unless an evaluation of the crime or founded abuse has been made by the department of human services which concludes that the crime or founded abuse does not merit prohibition of employment or licensure. In its evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

87 Acts, ch 153, §16 HF 412
Subsection 2 amended

237.21 Confidentiality of records—penalty.

1. The information and records of or provided to a local board or the state board regarding a child receiving foster care and the child's family when relating to the foster care placement are not public records pursuant to chapter 22. The state board and local boards, with respect to hearings involving specific children receiving foster care and the child's family, are not subject to chapter 21.

2. Information and records relating to a child receiving foster care shall be provided to a local board or the state board by the department or child-care agency upon request by either board. A court having jurisdiction of a child receiving foster care shall release the information and records the court deems necessary to determine the needs of the child, if the information and records are not obtainable elsewhere, to a local board or the state board upon request by either board.

3. Members of the state board and local boards and the employees of the department are subject to standards of confidentiality pursuant to sections 217.30, 235A.15, and 600.16. Members of the state and local boards and employees of the department who disclose information or records of the board or department, other than as provided in subsection 2, are guilty of a simple misdemeanor.

87 Acts, ch 117, §2 SF 290
 Repealed effective July 1, 1988; 84 Acts, ch 1279, §44
 Subsection 3 amended

CHAPTER 237A

CHILD DAY CARE FACILITIES

237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Commissioner" means the commissioner of human services.
2. "Department" means the department of human services.
3. "Director" means the director of the division designated by the commissioner to administer this chapter.
4. "County board" means the county board of social welfare.
5. "Child" means a person under eighteen years of age.
6. "Relative" means a person who by marriage, blood or adoption is a parent, grandparent, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, or guardian.
7. "Child day care" means the care, supervision, or guidance of a child by a person other than the parent, guardian, relative or custodian for periods of two hours or more and less than twenty-four hours per day per child on a regular basis in a place other than the child's home, but does not include:
 - a. An instructional program administered by a public or nonpublic school system approved or accredited by the department of education or the state board of regents.
 - b. A church-related instructional program of not more than one day per week.
 - c. Short-term classes held between school terms.
8. "Child care center" or "center" means a facility providing child day care for seven or more children, except when the facility is registered as a group day care home.
 - a. "Family day care home" means a facility which provides child day care to less than seven children.
 - b. "Group day care home" means a facility providing child day care for more than six but less than twelve children, with no more than six children at one time being less than six years of age.
10. "Child day care facility" or "facility" means a child care center, group day care home, or registered family day care home.
11. "Licensed center" means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.
12. "Low-income family" means a family whose monthly gross income is less than the lower of:
 - a. Eighty percent of the median income of a family of four in this state adjusted to take into account the size of the family; or
 - b. The median income of a family of four in the fifty states and the District of Columbia adjusted to take into account the size of the family.
13. "State day care advisory committee" means the state day care advisory committee established pursuant to sections 237A.21 and 237A.22.

14. "Preschool" means a child day care facility which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills and motor skills, and to extend their interest and understanding of the world about them.

87 Acts, ch 115, §34 SF 374
Subsection 7, paragraph a amended

237A.5 Personnel.

1. All personnel in licensed or registered facilities shall have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in section 135C.1 and shall be repeated every three years after initial employment. Controlled medical conditions which would not affect the performance of the employee in the capacity employed shall not prohibit employment.

2. A person who has been convicted of a violation under a law of any state of a crime or a person with a record of founded child abuse shall not own or operate or be employed as a staff member, with direct responsibility for child care, of a child day care facility, as defined in section 237A.1, subsection 10, and shall not live in a child day care facility unless an evaluation of the crime or founded abuse has been made by the department of human services which concludes that the crime or founded abuse does not merit prohibition of employment licensure, or registration. In its evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

87 Acts, ch 153, §17 HF 412
Section stricken and rewritten

CHAPTER 246

IOWA DEPARTMENT OF CORRECTIONS

246.108 Director—duties, powers.

1. The director shall:
 - a. Supervise the operations of the institutions under the department's jurisdiction and may delegate the powers and authorities given the director by statute to officers or employees of the department.
 - b. Supervise state agents whose duties relate primarily to the department.
 - c. Establish and maintain a program to oversee women's institutional and community corrections programs and to provide community support to ensure continuity and consistency of programs. The person responsible for implementing this section shall report to the director.
 - d. Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective institutions which shall include habilitative services and treatment for mentally retarded offenders. For the purposes of this paragraph, habilitative services and treatment means medical, mental health, social, educational, counseling, and other services which will assist a mentally retarded person to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are mentally retarded, as defined in section 222.2, subsection 5. Identification shall be made by a qualified mental retardation professional. In assigning a mentally retarded offender, or an offender with an

inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to mentally ill and mentally retarded offenders.

e. Employ, assign, and reassign personnel as necessary for the performance of duties and responsibilities assigned to the department. Employees shall be selected on the basis of fitness for work to be performed with due regard to training and experience and are subject to chapter 19A.

f. Establish standards of mental fitness which shall govern the initial recruitment, selection, and appointment of correctional officers. To promote these standards, the director shall by rule require a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of all applicants for a correctional career.

g. Examine all state institutions which are penal, reformatory, or corrective to determine their efficiency for adequate care, custody, and training of their inmates and report the findings to the board.

h. Prepare a budget for the department, subject to the approval of the board, and other reports as required by law.

i. Develop long-range correctional planning and an on-going five-year corrections master plan. The director shall annually report to the general assembly to inform its members as to the status and content of the planning and master plan.

j. Supervise rehabilitation camps within the state as may be established by the director. Persons committed to institutions under the department may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

k. Adopt rules subject to the approval of the board, pertaining to the internal management of institutions and agencies under the director's charge and necessary to carry out the duties and powers outlined in this section.

l. Adopt rules, policies, and procedures, subject to the approval of the board, pertaining to the supervision of parole and work release.

m. Provide routine administrative and support services to the board of parole.

n. Cooperate with Iowa State University of science and technology to provide, for purposes of agricultural research, development, and testing, the use of resources, including property, facilities, labor, and services, connected with institutions listed in section 246.102. However, use of the resources by the university is subject to approval by the director. Before granting approval, the director shall require that the university compensate the department for the use of the resources, on terms specified by the director.

o. Establish and maintain a correctional training center at the Mount Pleasant correctional facility.

2. The director, with the express approval of the board, may establish for any inmate sentenced pursuant to section 902.3 a furlough program under which inmates sentenced to and confined in any institution under the jurisdiction of the department may be temporarily released. A furlough for a period not to exceed fourteen days may be granted when an immediate member of an inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to participate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow inmates to participate in programs or activities that serve rehabilitative objectives.

3. The director may establish a sales bonus system for the sales representatives for prison industry products. If a sales bonus system is established, the system shall not affect the status of the sales representatives under chapter 19A.

4. The director may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the

department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The director shall establish rules in accordance with chapter 17A to carry out the purpose of this subsection.

5. The director may obtain assistance for the department for construction, facility planning, and project accomplishment with the department of general services and by contracting under chapter 28E for data processing with the department of human services or the department of general services.

6. The director or the director's designee, having probable cause to believe that a person has escaped from a state correctional institution or a person released on work release has absconded from a work release facility, may make a complaint before a judge or magistrate. If it is determined from the complaint or accompanying affidavits that there is probable cause to believe that the person has escaped from a state correctional institution or absconded from a work release facility, the judge or magistrate shall issue a warrant for the arrest of the person.

87 Acts, ch 139, §1 HF 241
 Subsection 1, NEW paragraph n
 Former subsection 7 relocated as paragraph o of subsection 1

246.302 Farm operations administrator.

The director may appoint a farm operations administrator for institutions under the control of the departments of corrections and human services. If appointed, the farm operations administrator, subject to the direction of the director shall do all of the following:

1. Manage and supervise all farming and nursery operations at institutions, farms and gardens of the departments of corrections and human services.

2. Determine priorities on the use of agricultural resources and labor for farming and nursery operations, and cooperate with Iowa State University of science and technology in all approved uses connected with the institution.

3. Develop an annual operations plan for crop and livestock production and utilization that will provide work experience and contribute to developing vocational skills of the institutions' inmates and residents. The department of human services must approve the parts of the plan that affect farm operations on property of institutions having programs of the department of human services.

4. Coordinate farm lease arrangements, farm input purchases, farm product distribution, machinery maintenance and replacement, and renovation of farm buildings, fences and livestock facilities.

5. Develop and maintain accounting records, budgeting and cash flow systems, and inventory records.

6. Advise and instruct institution staff and inmates in application of agricultural technology.

7. Implement actions to restore and maintain productivity of soil resources at the institutions through crop rotation, minimum tillage, contouring, terracing, waterways, pasture renovation, windbreaks, buffer zones, and wildlife habitat in accordance with soil conservation service plans and recommendations.

8. Administer the revolving farm fund created in section 246.706.

9. Do any other farm management duties assigned by the director.

87 Acts, ch 139, §2 HF 241
 Subsection 2 amended

246.513 Assignment of OWI violators to treatment facilities.

1. The department of corrections in cooperation with judicial district departments of correctional services shall establish in each judicial district bed space for the confinement and treatment of offenders convicted of violating chapter 321J who are sentenced to the custody of the director. The offenders shall first be assigned to the Iowa medical classification facility at Oakdale for classification and after classification may be assigned to a residential facility operated by any

judicial district department of correctional services. The facilities established shall meet all the following requirements:

- a. Is a treatment facility meeting the licensure standards of the division of substance abuse of the department of public health.
- b. Is a facility meeting applicable standards of the American corrections association.
- c. Is a facility which meets any other rule or requirement adopted by the department pursuant to chapter 17A.

2. The assignment of an offender pursuant to subsection 1 shall be for purposes of substance abuse treatment and education, and may include work programs for the offender at times when the offender is not in substance abuse treatment or education.

3. Offenders assigned to a facility pursuant to this section shall not be included in calculations used to determine the existence of a prison overcrowding state of emergency.

4. Upon request by the director a county shall provide temporary confinement for offenders allegedly violating the conditions of assignment to a treatment program if space is available. The department shall negotiate a reimbursement rate with each county for the temporary confinement of offenders allegedly violating the conditions of assignment to a treatment program who are in the custody of the director or who are housed or supervised by the judicial district department of correctional services. The amount to be reimbursed shall be determined by multiplying the number of days a person is confined by the average daily cost of confining a person in the county facility as negotiated with the department. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director.

5. The director shall prepare proposed administrative rules for the consideration of the administrative rules review committee for the funding of the program by means of self-contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of funding, program structure, criteria for the evaluation of facilities and offenders for participation in the programs, and all other issues the director shall deem appropriate. Proposed rules prepared pursuant to this subsection shall be submitted to the administrative rules review committee on or before September 15, 1986.

87 Acts, ch 118, §1,2 SF 469

Subsection 1, unnumbered paragraph 1 stricken and rewritten
NEW subsection 4 and former subsection 4 renumbered as 5

246.514 Required test.

A person committed to an institution under the control of the department who bites another person, who causes an exchange of bodily fluids with another person, or who causes any bodily secretion to be cast upon another person, shall submit to the withdrawal of a bodily specimen for testing to determine if the person is infected with a contagious infectious disease. The bodily specimen to be taken shall be determined by the staff physician of the institution. The specimen taken shall be sent to the state hygienic laboratory at the state university at Iowa City or some other laboratory approved by the Iowa department of public health. If a person to be tested pursuant to this section refuses to submit to the withdrawal of a bodily specimen, application may be made by the superintendent of the institution to the district court for an order compelling the person to submit to the withdrawal and, if infected, to available treatment. An order authorizing the withdrawal of a specimen for testing may be issued only by a district judge or district associate judge upon application by the superintendent of the institution.

Failure to comply with an order issued pursuant to this section may result in the forfeiture of good conduct time, not to exceed one year, earned up to the time of the failure to comply.

Personnel at an institution under the control of the department or of a residential facility operated by a judicial district department of correctional services shall be notified if a person committed to any of these institutions is found to have a contagious infectious disease.

The department shall adopt policies and procedures to prevent the transmittal of a contagious infectious disease to other persons.

For purposes of this section, "*infectious disease*" means any infectious condition which if spread by contamination would place others at a serious health risk.

87 Acts, ch 185, §1 SF 340
NEW section

246.702 Deduction to pay court costs or dependents—deposits.

If allowances are paid pursuant to section 246.701, the director may deduct an amount established by the inmate's restitution plan of payment or an amount sufficient to pay all or part of the court costs taxed as a result of the inmate's commitment. The amount deducted shall be forwarded to the clerk of the district court or proper official. The director may pay all or any part of remaining allowances paid pursuant to section 246.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

87 Acts, ch 13, §3 SF 269
Section affirmed and reenacted effective April 2, 1987;
legislative findings; 87 Acts, ch 13, §1, 8 SF 269

246.901 Program.

The Iowa department of corrections, in consultation with the board of parole, shall establish a work release program under which the board of parole may grant inmates sentenced to an institution under the jurisdiction of the department the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment. Under appropriate conditions the program may also include an out-of-state work or treatment placement or release for the purpose of seeking employment and attendance at an educational institution. An inmate may be placed on work release status in the inmate's own home, under appropriate circumstances, which may include child care and housekeeping in the inmate's own home.

87 Acts, ch 118, §3 SF 469
Section amended

CHAPTER 248A

REPRIEVES, PARDONS, COMMUTATIONS, REMISSIONS, AND RESTORATIONS OF RIGHTS

248A.3 Recommendations by board of parole.

1. The board of parole shall periodically review all applications by persons convicted of criminal offenses and shall recommend to the governor the reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of the rights of citizenship for persons who have by their conduct given satisfactory evidence that they will become or continue to be law-abiding citizens.

2. The board of parole shall, upon request of the governor, take charge of all correspondence in reference to an application filed with the governor and shall, after careful investigation, provide the governor with the board's advice and recommendation concerning any person for whom the board has not previously issued a recommendation.

3. All recommendations and advice of the board of parole shall be entered in the proper records of the board.

87 Acts, ch 115, §35 SF 374
Subsection 1 amended

CHAPTER 249A

MEDICAL ASSISTANCE

249A.13 Pilot program on surgery for medicaid clients. Repealed by 87 Acts, ch 28, §1. SF 272

CHAPTER 249D

DEPARTMENT OF ELDER AFFAIRS

249D.44 Care review committee.

1. The care review committee program is administered by the long-term care resident's advocate program.

2. The responsibilities of the care review committee are in accordance with the rules adopted by the commission pursuant to chapter 17A. When adopting the rules, the commission shall consider the needs of residents of each category of licensed health care facility as defined in chapter 135C.1, subsection 4, and the services each facility may render. The commission shall coordinate the development of rules with the mental health and mental retardation commission to the extent the rules would apply to a facility primarily serving persons who are mentally ill, mentally retarded, or developmentally disabled. The commission shall coordinate the development of appropriate rules with other state agencies.

3. A health care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a care review committee member, unless permission for this disclosure is refused in writing by a family member.

87 Acts, ch 70, §2 HF 136
NEW subsection 3

CHAPTER 252

SUPPORT OF THE POOR

252.16 Settlement—how acquired.

A legal settlement in this state may be acquired as follows:

1. A person continuously residing in a county in this state for a period of one year acquires a settlement in that county except as provided in subsection 7 or 8.

2. A person having acquired a settlement in a county of this state shall not acquire a settlement in any other county until the person has continuously resided in the other county for a period of one year except as provided in subsection 7.

3. A person who is an inpatient, a resident, or an inmate of or is supported by an institution whether organized for pecuniary profit or not or an institution supported by charitable or public funds in a county in this state does not acquire a settlement in the county unless the person before becoming an inpatient, a resident, or an inmate in the institution or being supported by an institution has a settlement in the county. A minor child residing in an institution assumes the settlement of the child's custodial parent. Settlement of the minor child changes

with the settlement of the child's custodial parent, except that the child retains the settlement that the child's custodial parent has on the child's eighteenth birthday until the child is discharged from the institution, at which time the child acquires the child's own settlement by continuously residing in a county for one year.

4. Minor children who reside with both parents take the settlement of the parents. If the minor child resides on a permanent basis with only one parent or a guardian, the minor child takes the settlement of the parent or guardian with whom the child resides.

An emancipated minor acquires a legal settlement in the minor's own right. An emancipated minor is one who is absent from the minor's parents with the consent of the parents, is self-supporting, and has assumed a new relationship inconsistent with being a part of the family of the parents.

A minor, placed in the care of a public agency or facility as custodian or guardian, takes the legal settlement that the parents had upon severance of the parental relationship, and retains that legal settlement until a natural person is appointed custodian or guardian at which time the minor takes the legal settlement of the natural person or until the minor person attains the age of eighteen and acquires another legal settlement in the person's own right.

5. A person with settlement in this state who becomes a member on active duty of an armed service of the United States retains the settlement during the period of active duty. A person without settlement in this state who is a member on active duty of an armed service of the United States within the borders of this state does not acquire settlement during the period of active duty.

6. Subsections 1, 2, 3, and 7 do not apply to a blind person who is receiving assistance under the laws of this state. A blind person receiving assistance who has resided in one county of this state for a period of six months acquires legal settlement for support as provided in this chapter.

7. A person hospitalized in or receiving treatment at a state mental health institute or state hospital-school does not acquire legal settlement in the county in which the institute or hospital-school is located unless the person is discharged from the institute or hospital-school, continuously resides in the county for a period of one year subsequent to the discharge, and during that year is not hospitalized in and does not receive treatment at the institute or hospital-school.

8. A person receiving treatment or support services from any community-based provider of treatment or services for mental retardation, developmental disabilities, mental health, or substance abuse does not acquire legal settlement in the host county unless the person continuously resides in the host county for one year from the date of the last treatment or support service received by the person.

87 Acts, ch 50, §1, 2 SF 451
 Subsection 1 amended
 NEW subsection 8

CHAPTER 252A

UNIFORM SUPPORT OF DEPENDENTS LAW

252A.20 through 252A.23 Reserved.

252A.24 Interstate rendition.

The governor of this state may:

1. Demand of the governor of another state the surrender of a person found in that state who is charged in this state with failing to provide for the support of any person.

2. Surrender on demand by the governor of another state a person found in this state who is charged in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the act and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the act was in the demanding state.

87 Acts, ch 62, §1 HF 513
NEW section

252A.25 Conditions of interstate rendition.

1. Before making the demand upon the governor of another state for the surrender of a person charged in this state with failing to provide for the support of a person, the governor of this state may require the department of human services or any county attorney of this state to satisfy the governor that at least sixty days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

2. If, under a substantially similar statute, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to the governor whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

3. If proceedings have been initiated and the person demanded has prevailed therein, the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

87 Acts, ch 62, §2 HF 513
NEW section

CHAPTER 252B

CHILD SUPPORT RECOVERY

252B.13 Collection services center.

1. The department shall establish within the unit a collection services center for the receipt and disbursement of all support payments as defined in section 598.1. For purposes of this section, child support payments do not include attorney fees or court costs. The judicial department and the department of human services shall cooperate in the establishment of the center which will receive and disburse support payments.

2. The collection services center shall have no more than twenty-eight full-time equivalent positions. The department shall not transfer on a temporary or permanent basis any other personnel of the department to the center. The limitation on full-time equivalent positions does not apply to temporary conversion staff necessary to convert current records of the clerks of court into the center's data base. No temporary conversion staff are authorized on or after April 1, 1988.

3. The center shall establish a procedure to file and record complaints against the operation of the clearinghouse system. The center shall keep a record of all complaints received and the complaints shall be retained by the center. Upon

request for the complaints, the center shall provide the complaints received, tallied and in the aggregate as a public record.

4. The center shall develop a system to provide certified child support arrearages through telephone communications, without costs, from the center to the clerks of the district court and the clerks of the district court are authorized to receive this information. The center shall also retain written documentation of these records to permit access to the records in those situations where the electronic data base is inoperable. All requests for information shall receive a response within a two-hour period of time during the regular business hours of the center.

5. The state of Iowa, subject to chapter 25A, shall be financially responsible for errors made by the center in providing information to any person when that person acts on the basis of the information provided by the center.

6. The center shall submit a report relating to the time required between the time the payment is received and the time the funds are distributed to the recipient to the fiscal committee of the legislative council on August 1, 1987, November 1, 1987, January 1, 1988, and January 1 of each succeeding year.

87 Acts, ch 228, §30 HF 355
Amendment effective May 5, 1987
Section stricken and rewritten

252B.14 Support payments—clerk of court—collection services center.

Sections 252B.13 through 252B.17 apply to all initial or modified orders for support entered under this chapter, chapters 234, 252A, 252C, 598, and 675 of the Code. For purposes of this section, child support payments do not include attorney fees or court costs. All orders or judgments for support entered on or before March 31, 1987, shall direct the payment of such sums to the clerk of the district court for the use of the person for whom the payments have been awarded. All orders or judgments for support entered on or after April 1, 1987 shall direct the payment of such sums to the collection services center established pursuant to section 252B.13. Payments to persons other than the clerk of the district court and the collection services center do not satisfy the support obligations created by such orders or judgments, except as provided for trusts in section 252D.1, 598.22, or 598.23 or for tax refunds or rebates in section 602.8102, subsection 47.

87 Acts, ch 228, §31 HF 355
Amendment effective May 5, 1987
Section stricken and rewritten

CHAPTER 253

COUNTY CARE FACILITIES

253.9 Temporary admission.

The district court may order temporary admission of persons under its jurisdiction to the county care facility until other arrangements are made for care of such persons.

A judge, magistrate, or judicial hospitalization referee shall make all placements to a county care facility pursuant to section 135C.23.

87 Acts, ch 190, §3 HF 210
NEW unnumbered paragraph 2

CHAPTER 255

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

Obstetrical and newborn indigent patient care program; ch 255A

255.16 County quotas.

Subject to subsequent qualifications in this section, there shall be treated at the university hospital during each fiscal year a number of committed indigent

patients from each county which shall bear the same relation to the total number of committed indigent patients admitted during the year as the population of such county shall bear to the total population of the state according to the last preceding official census. This standard shall apply to indigent patients, the expenses of whose commitment, transportation, care and treatment shall be borne by appropriated funds and shall not govern the admission of either obstetrical patients under chapter 255A or obstetrical or orthopedic patients under this chapter in accordance with eligibility standards pursuant to section 255A.5. If the number of patients admitted from any county shall exceed by more than ten percent the county quota as fixed and ascertained under the first sentence of this section, the charges and expenses of the care and treatment of such patients in excess of ten percent of the quota shall be paid from the funds of such county at actual cost; but if the number of excess patients from any county shall not exceed ten percent, all costs, expenses, and charges incurred in their behalf shall be paid from the appropriation for the support of the hospital.

87 Acts, ch 233, §432 SF 511

Obstetrical and newborn indigent patient care program; ch 255A
Section amended

255.19 Treatment of other patients—use of earnings for new facilities.

The university hospital authorities may at their discretion receive into the hospital for medical, obstetrical or surgical treatment or hospital care, patients not committed thereto under the provisions of this chapter; but the treatment or care of such patients shall not in any way interfere with the proper medical or surgical treatment or hospital care of committed patients. The university hospital ambulances and ambulance personnel may be used for the transportation of such patients at a reasonable charge if specialized equipment is required and is not otherwise available and if such use does not interfere with the ambulance transportation of patients committed to the hospital.

All of the provisions of this chapter except as to commitment of patients shall apply to such patients. The university hospital authorities shall collect from the person or persons liable for the support of such patients reasonable charges for hospital care and service and deposit the same with the treasurer of the university for the use and benefit of the university hospital except as specified for obstetrical patients pursuant to section 255A.9. Earnings of the hospital whether from private patients, cost patients, or indigents shall be administered so as to increase as much as possible, the service available for indigents, including the acquisition, construction, reconstruction, completion, equipment, improvement, repair, and remodeling of medical buildings and facilities and additions thereto and the payment of principal and interest on bonds issued to finance the cost thereof as authorized by the provisions of chapter 263A. The physicians and surgeons on the hospital staff who care for patients provided for in this section may charge for their medical services under such rules, regulations and plan therefor as approved by the state board of regents.

87 Acts, ch 233, §433 SF 511

Unnumbered paragraph 2 amended

255.26 Expenses—how paid—action to reimburse county.

Warrants issued under section 255.25 shall be promptly drawn on the treasurer of state and forwarded by the director of revenue and finance to the treasurer of the state university, and the same shall be by the treasurer of the state university placed to the credit of the funds which are set aside for the support of said hospital. However, warrants shall not be paid unless the UB-82 claim required pursuant to section 255A.13 has been filed with the Iowa health data commission. The superintendent of the said university hospital shall certify to the auditor of state on the first day of January, April, July and October of each year, the amount as herein provided not previously certified by the superintendent due the state from the several counties having patients chargeable thereto, and the auditor of state

shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto. Expenses for obstetrical patients served under section 255A.9 shall be reimbursed as specified in section 255A.9.

The county auditor, upon receipt of the certificate, shall enter it to the credit of the state in the ledger of state accounts, and at once issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which notice shall be filed by the treasurer as authority for making the transfer. The county treasurer shall include the amount transferred in the next remittance of state taxes to the treasurer of state, to accrue to the credit of the university hospital fund.

The state auditor shall certify the total cost of commitment, transportation and caring for each indigent patient under the terms of this statute to the county auditor of such patient's legal residence, and such certificate shall be preserved by the county auditor and shall be a debt due from the patient or the persons legally responsible for the patient's care, maintenance or support; and whenever in the judgment of the board of supervisors the same or any part thereof shall be collectible, the said board may in its own name collect the same and is hereby authorized to institute suits for such purpose; and after deducting the county's share of such cost shall cause the balance to be paid into the state treasury to reimburse the university hospital fund.

Should any county fail to pay these bills within sixty days from the date of certificate from the superintendent, the director of revenue and finance shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state.

87 Acts, ch 233, §434 SF 511
Unnumbered paragraph 1 amended

CHAPTER 255A

OBSTETRICAL AND NEWBORN INDIGENT PATIENT CARE PROGRAM

255A.1 State policy.

It is the policy of the state to provide obstetrical and newborn care to medically indigent individuals in this state, at the appropriate and necessary level, at a licensed hospital or health care facility closest and most available to the residence of the indigent individual.

87 Acts, ch 233, §435 SF 511
NEW section

255A.2 Obstetrical and newborn indigent patient care program.

A statewide obstetrical and newborn indigent patient care program is established for the purpose of providing obstetrical and newborn care to medically indigent residents of this state. Appropriations by the general assembly for this chapter shall be allocated for the obstetrical and newborn patient care fund within the Iowa department of public health and shall be utilized for the obstetrical and newborn indigent patient care program as specified in this chapter. Indigent patients in need of such care residing in the counties of Cedar, Clinton, Iowa, Johnson, Keokuk, Louisa, Muscatine, Scott, and Washington shall be provided the care at the university hospitals under the nonquota obstetrical program under chapter 255.

87 Acts, ch 233, §436 SF 511
NEW section

255A.3 Administration of program.

The Iowa department of public health shall administer the statewide obstetrical and newborn indigent patient care program. The department shall adopt admin-

istrative rules to implement the program pursuant to chapter 17A. Administrative costs of the department shall not exceed three percent of the annual funds appropriated for the obstetrical and newborn patient care fund.

87 Acts, ch 233, §437 SF 511
NEW section

255A.4 Patient quota formula.

The Iowa department of public health shall establish a patient quota formula for determining the maximum number of obstetrical and newborn patients eligible for the program from each county. The formula shall be based upon the annual appropriation for the program, the average number of live births in each county during the most recent three-year period for which statistics are available, and the per capita income for each county during the most recent one-year period for which statistics are available. In accordance with this formula the department shall allocate a patient quota to each county at the beginning of each fiscal year. The department shall provide for the reassignment of an unused county quota allotment on April 1 of each year. The reassignment shall be taken only from a county which has an unused quota allotment for the portion of the fiscal year ending March 31. A county may utilize its quota allotment for a patient determined to be eligible before the end of the fiscal year but scheduled to need care after the end of the fiscal year. The reassignment of an unused county allotment shall be made to other counties on the basis of rules adopted by the department pursuant to chapter 17A.

A woman who resides in a county which exceeds the patient quota allocated for the county, and who has been deemed eligible under section 255A.5, shall be served at the University of Iowa hospitals and clinics pursuant to section 255.16.

87 Acts, ch 233, §438 SF 511
NEW section

255A.5 Minimum eligibility standards.

The Iowa department of public health, in collaboration with the department of human services and in consultation with the Iowa state association of counties, shall adopt rules, pursuant to chapter 17A, establishing minimum standards for eligibility for obstetrical and newborn care, including physician examination, medical testing, ambulance services, and inpatient transportation costs, for indigent obstetrical and newborn care provided by the University of Iowa hospitals and clinics and by other licensed hospitals and physicians. The minimum standards for eligibility shall provide eligibility for persons with incomes at or below one hundred fifty percent of the annual revision of the poverty income guidelines published by the United States department of health and human services, and shall provide, but shall not be limited to providing, eligibility for uninsured and underinsured persons financially unable to pay for necessary obstetrical and newborn care and orthopedic care. The minimum standards may include a spend-down provision. The resource standards shall be set at or above the resource standards under the federal supplemental security income program. The resource exclusions allowed under the federal supplemental security income program shall be allowed and shall include resources necessary for self-employment.

87 Acts, ch 233, §439 SF 511
NEW section

255A.6 Application and certification for care.

A person desiring obstetrical and newborn care, the cost of which is payable from the obstetrical and newborn patient care fund, or the parent or guardian of a minor desiring or in need of such care, may apply to the director of a maternal health center, operated by the Iowa department of public health, to have the cost of such care paid from the fund. In counties not served by such a center, the department shall contract with another agency, institution or organization to

receive and process applications for care. The director of the center shall first ascertain from the local office of the department of human services if the applicant would be eligible for medical assistance or for assistance under the medically needy program without any spend-down requirement, pursuant to chapter 249A. If the applicant is eligible for assistance pursuant to chapter 249A, or if the applicant is eligible for maternal and child health care services covered by a maternal and child health program, the obstetrical patient care program shall not provide such assistance, care, or covered services provided under other programs. The Iowa department of public health, with the department of human services, shall jointly develop a standardized application form and shall coordinate the determination of eligibility for medical assistance and the obstetrical patient care program. In counties in which the maternal and child health clinic processes the application, the clinic shall notify the county relief office of the application process.

87 Acts, ch 233, §440 SF 511
NEW section

255A.7 Freedom of choice of provider.

A person certified for obstetrical and newborn care under this chapter may choose to receive the appropriate level of care at the University of Iowa hospitals and clinics or any other licensed hospital or health care facility.

87 Acts, ch 233, §441 SF 511
NEW section

255A.8 Reimbursable costs of care.

The obstetrical and newborn care costs of a person certified for such care under this chapter at a licensed hospital or health care facility or from licensed physicians shall be paid by the Iowa department of public health from the obstetrical and newborn patient care fund. However, a physician who provides obstetrical or newborn care at the University of Iowa hospitals and clinics to a person certified for care under this chapter is not entitled to receive any compensation for the provision of such care in accordance with section 255.23.

87 Acts, ch 233, §442 SF 511
NEW section

255A.9 Allowable reimbursements.

All providers of services to obstetrical and newborn patients under this chapter shall agree to accept as full payment the reimbursements allowable under the medical assistance program established pursuant to chapter 249A, adjusted for intensity of care. However, the total reimbursement from the obstetrical and newborn patient care fund to providers of services for residents of a county is limited to that county's obstetrical and newborn patient quota multiplied by the medical assistance program's average reimbursement for obstetrical and newborn care for the most recent fiscal year except as otherwise provided in this section. The Iowa department of public health shall reserve ten percent of the fund annually for payment of the costs of care of a patient certified for care under this chapter in excess of the medical assistance program's average reimbursements if the nature and extent of the care justifies such additional reimbursement. The department shall adopt rules pursuant to chapter 17A, establishing the requirements for such additional reimbursement.

87 Acts, ch 233, §443 SF 511
NEW section

255A.10 Procedures for payment.

The Iowa department of public health shall establish procedures for payment for providers of services to obstetrical and newborn patients under this chapter from the obstetrical and newborn patient care fund. All billings from such

providers shall be submitted directly to the department. However, payment shall not be made unless the application and certification for care pursuant to section 255A.6 is performed.

87 Acts, ch 233, §444 SF 511
NEW section

255A.11 County responsibility for costs of care.

A county shall not be held responsible for the costs of providing obstetrical and newborn care, including physician examination, medical testing, ambulance services, and transportation costs, to pregnant women and their newborn infants who meet the eligibility requirements adopted by the Iowa department of public health.

87 Acts, ch 233, §445 SF 511
NEW section

255A.12 Reversion or transfer of moneys in the obstetrical and newborn patient care fund.

Moneys encumbered prior to June 30 of a fiscal year for a certified eligible pregnant woman scheduled to deliver in the next fiscal year shall not revert from the obstetrical and newborn patient care fund to the general fund of the state. Moneys allocated to the obstetrical and newborn patient care fund shall not be transferred nor voluntarily reverted from the fund within a given fiscal year.

87 Acts, ch 233, §446 SF 511
NEW section

255A.13 Data collection.

Beginning July 1, 1987, the University of Iowa hospitals and clinics shall submit, on a quarterly basis, UB-82 claims for all patients discharged after being served under the indigent patient program under chapter 255. The UB-82 claim shall include all data elements which are required by the Iowa health data commission.

87 Acts, ch 233, §447 SF 511
NEW section

CHAPTER 256

DEPARTMENT OF EDUCATION

256.7 Duties of state board.

Except for the college aid commission, the state board shall:

1. Adopt and establish policy for programs and services of the department pursuant to law.
2. Constitute the state board for vocational education under chapters 258 and 259.
3. Constitute the board of educational examiners for the certification of administrative, supervisory, and instructional personnel for the public school systems of the state. The state board shall adopt rules prescribing the types and classes of certificates; requirements for certificates; standards for acceptance of degrees, credits, courses, and other evidences of training from public and private institutions of higher learning and other training institutions in this state and outside this state; and standards for the approval of programs of teacher education. The state board shall perform duties imposed upon the board of educational examiners under chapter 260.
4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.
5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.

6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board shall review the record and decision of the director of the department of education in appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.

7. Develop plans for the restructuring of school districts, area education agencies, and merged area schools, with specific emphasis on combining the area education agencies and merged area schools. The plans shall be reported to the general assembly not later than October 1, 1987.

In addition, the state board shall develop plans for redrawing the boundary lines of area education agencies so that the total number of area education agencies is no fewer than four and no greater than twelve. The state board shall also study the governance structure of the merged area schools, including but not limited to governance at the state level with a director of area school education serving under a state board. The plans relating to the area education agencies and merged area schools shall be submitted to the general assembly not later than January 8, 1990.

The focus of the plans shall be to assure more productive and efficient use of limited resources, equity of geographical access to facilities, equity of educational opportunity within the state, and improved student achievement.

The state board shall consult with representatives from the local school districts, area education agencies, and merged area schools in developing the plans. The representatives shall include board members, school administrators, teachers, parents, students, associations interested in education, and representatives of communities of various sizes.

8. Develop plans for the approval of teacher preparation programs that incorporate the results of recently completed research and national studies on teaching for the twenty-first century and develop plans for providing assistance to newly graduated teachers, including options for internships and reduced teaching loads. The plans shall be submitted to the general assembly not later than October 1, 1988.

9. Adopt rules under chapter 17A for the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, merged area schools, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and the accessibility of certificated teachers.

When curriculum is provided by means of telecommunications, it shall be taught by a certificated teacher who is properly endorsed or approved. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by a certificated and properly endorsed or approved teacher at the location at which the telecommunications originates, the curriculum received shall be under the supervision of a certificated teacher. For the purposes of this subsection, "supervision" means that the curriculum is monitored by a certificated teacher and the certificated teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from merged area schools, area education agencies, accredited or approved nonpublic

schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

10. Rules adopted under this section shall provide that telecommunications shall not be used by school districts as the exclusive means to provide any course which is required by the minimum educational standards for approval or accreditation.

11. Develop evaluation procedures that will measure the effects of instruction by means of telecommunications on student achievement, socialization, intellectual growth, motivation, and other related factors deemed relevant by the state board, for the development of an educational data base. The state board shall consult with the state board of regents and the teacher education departments at its institutions, other approved teacher education departments located within private colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

12. Adopt rules pursuant to chapter 17A relating to educational programs and budget limitations for educational programs pursuant to sections 282.28, 282.29, 282.30, and 282.31. The rules adopted pursuant to this subsection shall be written by June 30, 1987.

87 Acts, ch 224, §24, 25 HF 499; 87 Acts, ch 207, §1 SF 333; 87 Acts, ch 211, §2 SF 162; 87 Acts, ch 233, §449 SF 511
Study of coordination of calendars and schedules to facilitate use of educational telecommunications; report January 15, 1989; 87 Acts, ch 207, §3 SF 333

See Code editor's note

Subsection 7, unnumbered paragraph 1 amended

NEW subsection 8

NEW subsections 9, 10, and 11

NEW subsection 12

256.9 Duties of director.

Except for the college aid commission, the director shall:

1. Carry out programs and policies as determined by the state board.
2. Recommend to the state board rules necessary to implement programs and services of the department.
3. Establish divisions of the department as necessary or desirable in addition to divisions required by law. The organization of the department shall promote coordination of functions and services relating to administration, supervision, and improvement of instruction.
4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be appointed on the basis of their professional qualifications, experience in administration, and background. Members of the professional staff are not subject to chapter 19A and shall be employed pursuant to section 256.10.
5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.
6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of the department.
7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.
8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.
9. Conduct research on education matters.

10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.

11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.

12. Act as the executive officer of the state board.

13. Act as custodian of a seal for the director's office and authenticate all true copies of decisions or documents.

14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the department.

15. Provide the same educational supervision for the schools maintained by the commissioner of human services as is provided for the public schools of the state and make recommendations to the commissioner of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.

17. Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board.

18. Prepare forms and procedures as necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed.

19. Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.

20. Preserve reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions.

21. Keep a record of the business transacted by the director.

22. Endeavor to promote among the people of the state an interest in education.

23. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.

24. Report biennially to the governor, at the time provided by law, the condition of the schools under the department's supervision, including the number and kinds of school districts, the number of schools of each kind, the number and value of schoolhouses, the enrollment and attendance in each county for the previous year, any measures proposed for the improvement of the public schools, financial and statistical information of public importance, and general information relating to educational affairs and conditions within the state or elsewhere. The report shall also review the programs and services of the department.

25. Direct area education agency administrators to arrange for professional teachers' meetings, demonstration teaching, or other field work for the improvement of instruction as best fits the needs of the public schools in each area.

26. Cause to be printed in book form, during the months of June and July in the year 1987 and every four years thereafter, if deemed necessary, all school laws then in force with forms, rulings, decisions, notes, and suggestions which may aid school officers in the proper discharge of their duties. A sufficient number shall be

furnished to school officers, directors, superintendents, area administrators, members of the general assembly, and others as reasonably requested.

27. Cause to be printed in pamphlet form after each session of the general assembly any amendments or changes in the school laws with necessary notes and suggestions to be distributed as prescribed in subsection 26.

28. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

29. Provide administrative services for the independent nonprofit quasi-public First In the Nation in Education foundation.

30. Approve the salaries of area education agency administrators.

87 Acts, ch 115, §36 SF 374

Director to restructure department for efficiency, effectiveness, and reduction of administrative costs; 86 Acts, ch 1245, §1499

Cooperation with department of human services in displaced homemaker program; §241.3

Grants for staff development programs to assist teachers and administrators in use of telecommunications as instructional tool; 87 Acts, ch 207, §5 SF 333; see also 87 Acts, ch 233, §418 SF 511

Subsection 4 amended

256.10A Duties of consultants.

Consultants employed by the director and paid from the fund created by section 8.41 from moneys received from Pub. L. No. 97-35, Title V, subtitle D, chapter 2, shall assist those employees designated by the department as school improvement specialists in helping school districts to participate in school improvement activities identified as a result of the accreditation process conducted pursuant to section 256.11. The department shall assign consultants to assist school districts that the department determines are most in need of participation in school improvement activities.

For the purpose of this section, "*school improvement specialist*" means a consultant employed by the department who is responsible for the accreditation of school districts under section 256.11.

87 Acts, ch 233, §450 SF 511

NEW section

256.11 Educational standards.

The state board shall, except as otherwise provided in this section, adopt rules establishing standards and a procedure for accrediting all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. A nonpublic school which offers only a prekindergarten program may, but is not required to, seek and obtain accreditation under this chapter. A list of accredited schools shall be maintained by the department. The state board shall adopt rules to require that a multicultural, nonsexist approach is used by school districts. The educational program shall be taught from a multicultural, nonsexist approach. The rules adopted by the state board that establish standards shall delineate and be based upon the educational program as follows:

1. If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. A prekindergarten teacher employed by a school corporation or county or joint county school system, or its successor agency, and receiving a salary from state and local funds, shall hold a certificate certifying that the holder is qualified to teach in prekindergarten.

2. The kindergarten program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and

communication skills, as well as a capacity for the completion of individual tasks, and protection and development of physical well-being. A kindergarten teacher shall hold a certificate providing that the holder is qualified to teach in kindergarten. An accredited nonpublic school must meet the requirements of this subsection only if the nonpublic school offers a kindergarten program.

3. The following areas shall be taught in the grades one through six: English-language arts, including reading, handwriting, spelling, oral and written English, and literature; social studies, including geography, history of the United States and Iowa, cultures of other peoples and nations, and American citizenship, including the study of national, state, and local government in the United States; mathematics; science, including environmental awareness and conservation of natural resources; health and physical education, including the effects of alcohol, tobacco, drugs, and poisons on the human body; the characteristics of communicable diseases; traffic safety, including pedestrian and bicycle safety procedures; music; and art.

4. The following shall be taught in grades seven and eight as a minimum program: science, including environmental awareness and conservation of natural resources; mathematics; social studies; cultures of other peoples and nations, and American citizenship; English-language arts which shall include reading, spelling, grammar, oral and written composition, and may include other communication subjects; health and physical education, including the effects of alcohol, tobacco, drugs, and poisons on the human body, the characteristics of communicable diseases, including venereal diseases and current crucial health issues; music; and art.

5. Provision for special education services and programs shall be made for children requiring special education.

6. In grades nine through twelve, a unit of credit consists of a course or equivalent related components or partial units taught throughout the academic year. The minimum program for grades nine through twelve is:

a. Four units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years. The units of science shall include instruction in environmental awareness and conservation of natural resources.

b. Four units of the social studies. American history, American government, government and cultures of other peoples and nations, and general consumer education, family law, and economics, including comparative and consumer economics, shall be taught in the units but need not be required as full units. All students are required to take one unit of American history and one-half unit of the governments of Iowa and the United States, including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot.

The county auditor, upon request and at a site chosen by the county auditor, shall make available to schools within the county voting machines or sample ballots that are generally used within the county, at times when these machines or sample ballots are not in use for their recognized purpose.

c. Four units of English-language arts.

d. Four units of a sequential program in mathematics.

e. One unit of general mathematics.

f. Two units of one foreign language; the units of foreign language may be taught in alternate years, provided there is no break in the progression of instruction from one year to the next. However, the department may waive the foreign language requirement on an annual basis upon the request of the board of directors of a school district or the authorities in charge of a nonpublic school if the board or authorities are able to prove that a certificated teacher was employed and assigned a schedule that would have allowed students to enroll in a foreign

language class, the foreign language class was properly scheduled, students were aware that a foreign language class was scheduled, and no students enrolled in the class.

g. All students physically able shall be required to participate in physical education activities during each semester they are enrolled in school except as otherwise provided in this paragraph. A minimum of one-eighth unit each semester shall be required, except that any student participating in an organized and supervised high school athletic program which requires at least as much time of participation per week as one-eighth unit may be excused from the physical education course during the time of the student's participation in the athletic program. A twelfth grade student who meets the requirements of this paragraph may be excused from the physical education requirement by the principal of the school in which the student is enrolled if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. A student who wishes to be excused from the physical education requirement must be enrolled in a cooperative or work-study program or other educational program authorized by the school which requires the student to leave the school premises for specified periods of time during the school day. The student must seek to be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student. The principal of the school shall inform the superintendent of the school district or nonpublic school that the student has been excused. Physical education activities shall emphasize leisure time activities which will benefit the student outside the school environment and after graduation from high school.

h. Five units of occupational education subjects, which may include, but are not limited to, programs, services, and activities which prepare students for employment in office and clerical, trade and industrial, consumer and homemaking, agriculture, distributive, and health occupations.

i. Units or partial units in the fine arts which may include art, music and dramatics.

j. Health education, including an awareness of physical and mental health needs, the effects of alcohol, tobacco, drugs, and poisons on the human body, the characteristics of communicable diseases, including venereal diseases, and current crucial health issues.

7. A pupil shall not be required to enroll in either physical education or health courses if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious belief.

8. Upon request of the board of directors of a public school district or the authorities in charge of a nonpublic school, the director may, for a number of years to be specified by the director, grant the district board or the authorities in charge of the nonpublic school exemption from one or more of the requirements of the educational program specified in subsection 6. The exemption may be renewed. Exemptions shall be granted only if the director deems that the request made is an essential part of a planned innovative curriculum project which the director determines will adequately meet the educational needs and interests of the pupils and be broadly consistent with the intent of the educational program as defined in subsection 6.

The request for exemption shall include all of the following:

- a. Rationale of the project to include supportive research evidence.
- b. Objectives of the project.
- c. Provisions for administration and conduct of the project, including the use of personnel, facilities, time, techniques, and activities.
- d. Plans for evaluation of the project by testing and observational measures of pupil progress in reaching the objectives.
- e. Plans for revisions of the project based on evaluation measures.
- f. Plans for periodic reports to the department.

g. The estimated cost of the project.

9. To facilitate the implementation and economical operation of the educational program defined in subsections 4 and 6, each school offering any of grades seven through twelve, except a school which offers grades one through eight as an elementary school, shall have:

a. A qualified school media specialist who shall meet the certification and approval standards prescribed by the department and adequate media center facilities.

(1) *School media specialist.* The media specialist may be employed on a part-time or full-time basis, or may devote only part time to media service activities, according to the needs of the school and the availability of media personnel, as determined by the local board. The director shall recommend standards based upon the number of students in attendance, the nature of the academic curriculum and other appropriate factors.

(2) *Organization and adequacy of collection.* The media center shall be organized as a resource center of instructional material for the entire educational program. The number and kind of library and reference books, periodicals, newspapers, pamphlets, information files, audiovisual materials, and other learning aids shall be adequate for the number of pupils and the needs of instruction in all courses.

b. A qualified school guidance counselor who shall meet the certification and approval standards prescribed by the department. The guidance counselor may be employed on a part-time or full-time basis, or may devote only part time to counseling services, according to the needs of the school and the availability of guidance personnel, as determined by the local board. The director shall recommend standards based upon the number of students in attendance and other appropriate factors. Other members of the noninstructional professional staff, including but not limited to physicians, dentists, nurses, school psychologists, speech therapists, and other specialists, may also be employed or shared by one or more schools. The guidance counselor shall meet the certification and approval standards of the department and noninstructional staff members shall meet the professional practice requirements of this state relating to their special services.

c. Arrangement for special education services.

d. Adequate instructional materials for classrooms.

10. The state board shall establish an accreditation process for school districts and nonpublic schools seeking accreditation pursuant to this subsection and subsections 11 and 12. As required in section 256.17, by July 1, 1989, all school districts shall meet standards for accreditation. For the school year commencing July 1, 1989 and school years thereafter, the department of education shall use a two-phase process for the continued accreditation of schools and school districts.

Phase I consists of annual monitoring by the department of education of all accredited schools and school districts for compliance with accreditation standards adopted by the state board of education as provided by section 256.17. The phase I monitoring requires that accredited school districts and schools annually complete accreditation compliance forms adopted by the state board and file them with the department of education. In addition, employees of the department of education shall complete at least one on-site visit each year to each accredited school and school district to review the educational programs and the information included in the compliance forms.

Phase II requires the use of an accreditation committee, appointed by the director of the department of education, to conduct an on-site visit to an accredited school or school district if any of the following conditions exist:

a. When the annual monitoring of phase I indicates that a school or school district may be deficient or fails to be in compliance with accreditation standards.

b. In response to a petition filed with the director requesting such a committee visitation that is signed by twenty percent or more of the registered voters of a school district.

c. In response to a petition filed with the director requesting such a committee visitation that is signed by twenty percent or more of the parents or guardians who have children enrolled in the school or school district.

d. At the direction of the state board of education.

The number and composition of the membership of an accreditation committee shall be determined by the director and may vary due to the specific nature or reason for the visit. In all situations, however, the chairperson and a majority of the committee membership shall be from the instructional and administrative program specialty staff of the department of education. Other members may include instructional and administrative staff from school districts, area education agencies, institutions of higher education, local board members and the general public. An accreditation committee visit to a nonpublic school requires membership on the committee from nonpublic school instructional or administrative staff or board members. A member of a committee shall not have a direct interest in the nonpublic school or school district being visited.

Rules adopted by the state board may include provisions for coordination of the accreditation process under this section with activities of accreditation associations.

Prior to a visit to a school district or nonpublic school, members of the accreditation committee shall have access to all annual accreditation report information filed with the department by that nonpublic school or school district.

After visiting the school district or nonpublic school, the accreditation committee shall determine whether the accreditation standards have been met and shall make a report to the director, together with a recommendation whether the school district or nonpublic school shall remain accredited. The accreditation committee shall report strengths and weaknesses, if any, for each standard and shall advise the school or school district of available resources and technical assistance to further enhance strengths and improve areas of weakness. A school district or nonpublic school may respond to the accreditation committee's report.

11. The director shall review the accreditation committee's report, and the response of the school district or nonpublic school, and provide a report and recommendation to the state board along with copies of the accreditation committee's report, the response to the report, and other pertinent information. The state board shall determine whether the school district or nonpublic school shall remain accredited. If the state board determines that a school district or nonpublic school should not remain accredited, the director, in cooperation with the board of directors of the school district, or authorities in charge of the nonpublic school, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards, and shall establish a deadline date for completion of the procedures. The plan is subject to approval of the state board.

12. During the period of time specified in the plan for its implementation by a school district or nonpublic school, the school or school district remains accredited. The accreditation committee shall revisit the school district or nonpublic school and shall determine whether the deficiencies in the standards have been corrected and shall make a report and recommendation to the director and the state board. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected. If the deficiencies have not been corrected, the state board shall merge the territory of the school district with one or more contiguous school districts. Division of assets and liabilities of the school district shall be as provided

in sections 275.29 through 275.31. Until the merger is completed, the school district shall pay tuition for its resident students to an accredited school district under section 282.24.

13. Notwithstanding subsections 1 through 12 and as an exception to their requirements, a private high school or private combined junior-senior high school operated for the express purpose of teaching a program designed to qualify its graduates for matriculation at accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities shall be placed on a special accredited list of college preparatory schools, which list shall signify accreditation of the school for that express purpose only, if:

a. The school complies with minimum standards established by the Code other than this section, and rules adopted under the Code, applicable to:

- (1) Courses comprising the limited program.
- (2) Health requirements for personnel.
- (3) Plant facilities.
- (4) Other environmental factors affecting the programs.

b. At least eighty percent of those graduating from the school within the four most recent calendar years, other than those graduating who are aliens, graduates entering military or alternative civilian service, or graduates deceased or incapacitated before college acceptance, have been accepted by accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities.

c. A school claiming to be a private college preparatory school which fails to comply with the requirement of paragraph "b" of this subsection shall be placed on the special accredited list of college preparatory schools probationally if the school complies with the requirements of paragraph "a" of this subsection, but a probational accreditation shall not continue for more than four successive years.

14. Notwithstanding subsections 1 through 13 and as an exception to their requirements, a nonpublic grade school which is reopening is accredited even if it does not have a complete grade one through grade six program. However, the nonpublic grade school must comply with other minimum standards established by law and administrative rules adopted pursuant to the law and the nonpublic grade school must show progress toward reaching a grade one through grade six program.

87 Acts, ch 233, §451 SF 511; 87 Acts, ch 224, §26 HF 499

See Code editor's note

Subsections 10, 11 and 12 stricken and rewritten

256.13 Nonresident pupils.

The boards of directors of two or more school districts may by agreement provide for attendance of pupils residing in one district in the schools of another district for the purpose of taking courses not offered in the district of their residence. The boards may also provide by agreement that the districts will combine their enrollments for one or more grades. Courses and grades made available to students in this manner shall be considered as complying with any standards or laws requiring the offering of such courses and grades. The boards of directors of districts entering into such agreements may provide for sharing the costs and expenses of the courses. If the agreement provides for whole grade sharing, the costs and expenses shall be paid as provided in sections 282.10 through 282.12.

87 Acts, ch 224, §27 HF 499

1987 amendment not applicable to sharing agreements signed before July 1, 1987; 87 Acts, ch 224, §79 HF 499

Section amended

256.17 Standards for accredited schools.

The state board shall review the standards contained in section 256.11, shall review current literature relating to effective schools and learning environments, and shall consult with representatives from the higher education institutions, area education agencies, school board members, school administrators, teachers, parents, students, members of business, industry, and labor, other governmental

agencies, associations interested in education, and representatives of communities of various sizes to develop standards for accredited schools and school districts that encompass, but are not limited to the following general areas:

1. Objectives and assessment procedures for teaching specific competencies related to higher order thinking skills, learning skills, and communications skills.
2. Integration of the applications of current technologies into the general curriculum.
3. Procedures for curriculum development and refinement.
4. Staff development processes.
5. A performance evaluation process for its certificated staff using staff members who possess evaluator approval under section 260.33.
6. Use of support staff.
7. A specific number of hours per year for students to be engaged in formal academic instruction.
8. Learning opportunities for students whose needs are not met in the conventional classroom.
9. Career exploration activities and specific vocational education programs.
10. Curriculum standards that include the coordination of extracurricular and academic education goals.
11. Student responsibility and discipline policies.
12. Needs assessments and development of long-range plans as provided for in section 280.12.
13. Community and parent involvement in the education process.
14. Communication with business, industry, labor, and higher education regarding their expectations for adequate student preparation.

Notwithstanding the standards included in section 256.11, not later than July 1, 1987, the state board shall adopt rules establishing new standards for accredited schools. The rules shall be adopted under chapter 17A and shall require that schools and school districts meet the standards adopted by the state board not later than July 1, 1989.

Following adoption of the standards, the department of education shall assist schools and school districts to comply with the standards.

The director, in consultation with the boards of directors and the administration of the school districts, shall recommend to the state board not later than July 1, 1989, on the basis of evidence submitted by the school districts, which school districts meet the accreditation standards adopted by the state board.

Section 256.11, subsections 10, 11, and 12, apply to schools and school districts obtaining accreditation.

87 Acts, ch 224, §28 HF 499

Former unnumbered paragraph 5 stricken

256.18 Modified block scheduling.

1. The state board of education shall approve pilot projects, not exceeding four per year, for the purpose of sharing certificated instructional personnel between two or more districts, when the participating districts plan to utilize a modified block schedule for offering classes in the districts and sharing the certificated instructional personnel because of the modified block schedule. One-half of the approved pilot projects each year shall be projects of school districts with less than twelve hundred combined certified enrollment. The approved pilot projects shall also be as geographically distributed throughout the state as possible.

2. The boards of directors of two or more school districts may jointly apply to the state board of education for approval of a pilot project to jointly utilize a modified block schedule. The application shall be received by January 1 of the preceding school year. The state board shall review the applications and notify school districts with approved applications not later than February 15 of the preceding school year. The state board may request that a proposal be amended

and resubmitted within the specified time period, to permit the proposal to comply with the requirements pursuant to subsection 3.

3. The application, pursuant to subsection 2, shall include the following:

a. Demonstration of a projected minimum of fifteen percent annual combined instructional and support cost savings of the projected costs if the districts would not utilize a modified block schedule, through reduction of employment of certificated instructional and support personnel.

b. Demonstration among the grades participating in the project of the following: greater student-certificated instructional personnel ratio, an increased number of course offerings, and an average reduction of course preparations per certificated teacher.

c. Demonstration of the acceptance of the modified block schedule by the administration personnel, the majority of each board of directors of each school district participating in the pilot project, and the certificated instructional personnel.

d. Transition and implementation plans regarding the in-service plan pursuant to subsection 5 and the changes necessary for a permanent modified block schedule.

e. Sabbatical plan for temporarily displaced teachers, which may include, but not be limited to, in-service, postsecondary enrollment, career advancement, consultant and other teaching positions in another school district.

For purposes of this section "*instructional and support cost*" means the general education costs, including salaries, benefits, contract or purchase services, supplies, capital outlay, miscellaneous expenses, and fund transfers.

4. Certificated instructional personnel notified, after approval of the pilot project by the state board, that the person's position has been temporarily displaced for the period of the pilot project, shall continue to be employed by the school district in a sabbatical capacity as mutually determined by the person and the board. If the determination is made that the person may be employed as a teacher in another school district for the period of the pilot project, the person shall receive the amount of the difference between the compensation which would have been received from the school district participating in the pilot project and the compensation received from the school district not participating in the pilot project, from the school district participating in the pilot project. All other terms of the contract with the school district participating in the pilot project shall remain in effect for the school year affected by the pilot project.

5. The school districts participating in the approved pilot project shall conduct in-service training for all certificated instructional and noninstructional personnel regarding the modified block scheduling, between the date notified by the state board of education regarding approval of the pilot project and September 1. Personnel shall receive compensation for the training, based on the per diem compensation received under the contract of the employing school district. The in-service training shall not be less than ten days.

6. The school district shall submit a quarterly report to the department of education, including but not limited to, test scores, daily attendance rates, and resulting ratio between students and certificated instructional personnel. The state board of education shall provide consultation and information to the school districts with approved pilot projects by providing in-state and out-of-state consultants familiar with modified block scheduling, research, and dissemination of information, and any other manner deemed appropriate. The state board shall encourage the appropriate school districts to review the concept of modified block scheduling and to adopt the concept for school years beginning July 1, 1989 and thereafter.

7. A school district may conduct a pilot project for only one school year.

8. This section does not preclude a school district from sharing certificated instructional personnel with one or more other school districts in order to utilize

a modified block schedule for offering classes in the districts without obtaining approval from the department of education and designation as a pilot project.

87 Acts, ch 224, §29 HF 499
NEW section

256.19 Pilot projects.

For fiscal years in which moneys are appropriated by the general assembly for the purpose of section 256.18 the state board of education shall notify the department of revenue and finance of the amounts necessary for each pilot project in order to reimburse the certificated instructional personnel pursuant to section 256.18, subsection 4, for the in-service training pursuant to section 256.18, subsection 5, and for other costs related to the approved pilot projects.

87 Acts, ch 224, §30 HF 499
NEW section

256.20 Year around schools.

Pursuant to section 279.10, subsection 1, relating to the maintenance of school during an entire year, the board of directors of a school district may request approval from the state board of education for a pilot project for a year around three semester school year. The deadlines for approval of a pilot project under this section are the deadlines specified in section 256.18 for approval of a modified block scheduling pilot project.

The application shall describe the anticipated additional costs to the school district and the benefits to be gained from the three semester school year. Students would not be required to attend school more than two semesters each school year.

Participation in a pilot project shall not modify provisions of a master contract negotiated between a school district and a certified bargaining unit pursuant to chapter 20 unless mutually agreed upon.

If moneys are appropriated by the general assembly for funding the costs of pilot projects under this section, the state board of education shall notify the department of revenue and finance of the amounts to be paid to each school district with an approved pilot project.

87 Acts, ch 224, §31 HF 499
NEW section

256.21 Sabbatical program.

If the general assembly appropriates money for grants to provide sabbaticals for teachers, a sabbatical program shall be established as provided in this section. For the school years commencing July 1, 1988, July 1, 1989, and July 1, 1990, any teacher with at least seven years of teaching experience in this state may submit an application for a sabbatical to the department of education not later than November 1 of the preceding school year.

A teacher's application shall include a plan for the use of the period of the sabbatical, including, but not limited to, additional education, use of a fellowship, conducting of research, writing relating to a particular subject area, or other activities relating to an enhancement of teaching skills. The teacher's plan must be accompanied by the written approval of the superintendent of the school district and a statement by the superintendent describing the benefits of the sabbatical to the school district.

The state board of education shall adopt rules under chapter 17A relating to submission of sabbatical plans and criteria for awarding the sabbaticals, including both the benefit to the teacher and the benefit to the school district. Sabbaticals shall be awarded by the department not later than January 1 of the preceding school year.

A sabbatical grant to a teacher shall be equal to the costs to the school district of the teacher's regular compensation as defined in section 294A.2 plus the cost to the district of the fringe benefits of the teacher. The grant shall be paid to the

school district, and the district shall continue to pay the teacher's regular compensation as well as the cost to the district of the substitute teacher. Teachers and boards of school districts are encouraged to seek funding from other sources to pay the costs of sabbaticals for teachers. Grant moneys are miscellaneous income for purposes of chapter 442.

A sabbatical approved by the department may be for any period of time not exceeding one year.

A teacher granted a sabbatical under this section shall agree either to return to the school district granting the leave for a period of not less than two years or to repay to the department of education the amount of the sabbatical grant received during the leave.

Notwithstanding section 8.33, if moneys are appropriated by the general assembly for the sabbatical program for either the fiscal year beginning July 1, 1988 or July 1, 1989, the moneys shall not revert at the end of that fiscal year but shall carry over and may be expended during the next fiscal year.

This section does not preclude a school district from providing a sabbatical program for its teachers separate from the sabbatical program provided under this section.

87 Acts, ch 224, §32 HF 499
NEW section

256.22 through 256.29 Reserved.

256.30 Educational expenses for American Indians.

The department of education shall provide moneys to pay the expense of educating American Indian children residing in the Sac and Fox Indian settlement on land held in trust by the secretary of the interior of the United States in excess of federal moneys paid to the tribal council for educating the American Indian children when moneys are appropriated for that purpose. The tribal council shall administer the moneys distributed to it by the department and shall submit an annual report and other reports as required by the department to the department on the expenditure of the moneys.

The tribal council shall first use moneys distributed to it by the department of education for the purposes of this section to pay the additional costs of salaries for certificated instructional staff for educational attainment and full-time equivalent years of experience to equal the salaries listed on the proposed salary schedule for the school at the Sac and Fox Indian settlement for the school year beginning July 1, 1987 as that salary schedule existed on May 1, 1987, but the salary for a certificated instructional staff member employed on a full-time basis shall not be less than eighteen thousand dollars. The department of management shall approve allotments of moneys appropriated in this section when the department of education certifies to the department of management that the requirements of this section have been met.

87 Acts, ch 233, §453 SF 511
NEW section

CHAPTER 258A

CONTINUING PROFESSIONAL AND OCCUPATIONAL EDUCATION— LICENSEE DISCIPLINARY PROCEDURE

Identifying and reporting of dependent adult abuse
to be included in continuing education; see §235B.2

258A.1 Definitions.

1. "Licensing board" or "board" includes the following boards:
 - a. The state board of engineering and land surveying examiners, created pursuant to chapter 114.

- b. The board of examiners of shorthand reporters created pursuant to article 3 of chapter 602.
 - c. The board of accountancy, created pursuant to chapter 116.
 - d. The Iowa real estate commission, created pursuant to chapter 117.
 - e. The board of architectural examiners, created pursuant to chapter 118.
 - f. The Iowa board of landscape architectural examiners, created pursuant to chapter 118A.
 - g. The board of barber examiners, created pursuant to chapter 147.
 - h. The board of chiropractic examiners, created pursuant to chapter 147.
 - i. The board of cosmetology examiners, created pursuant to chapter 147.
 - j. The board of dental examiners, created pursuant to chapter 147.
 - k. The board of mortuary science examiners, created pursuant to chapter 147.
 - l. The board of medical examiners, created pursuant to chapter 147.
 - m. The board of nursing, created pursuant to chapter 147.
 - n. The board of examiners for nursing home administrators, created pursuant to chapter 135E.
 - o. The board of optometry examiners, created pursuant to chapter 147.
 - p. The board of pharmacy examiners, created pursuant to chapter 147.
 - q. The board of physical and occupational therapy examiners, created pursuant to chapter 147.
 - r. The board of podiatry examiners, created pursuant to chapter 147.
 - s. The board of psychology examiners, created pursuant to chapter 147.
 - t. The board of speech pathology and audiology examiners created pursuant to chapter 147.
 - u. The board for the licensing and regulation of hearing aid dealers, created pursuant to chapter 154A.
 - v. The board of veterinary medicine, created pursuant to chapter 169.
 - w. The board of certification, created pursuant to chapter 455B.
 - x. Any professional or occupational licensing board created after January 1, 1978.
 - y. The commissioner of insurance in licensing insurance agents pursuant to chapter 522, except those agents authorized to sell only credit life and credit accident and health insurance.
2. "*Continuing education*" means that education which is obtained by a professional or occupational licensee in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge. This education may be obtained through formal or informal education practices, self-study, research, and participation in professional, technical, and occupational societies, and by other similar means as authorized by the board.
 3. The term "*licensing*" and its derivations include the terms "*registration*" and "*certification*" and their derivations.
 4. "*Inactive licensee re-entry*" means that process a former or inactive professional or occupational licensee pursues to again be capable of actively and competently practicing as a professional or occupational licensee.
 5. "*Licensee discipline*" means any sanction a licensing board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional or occupational care.
 6. "*Disciplinary proceeding*" means any proceeding under the authority of a licensing board pursuant to which licensee discipline may be imposed.
 7. "*Peer review*" means evaluation of professional services rendered by a professional practitioner.
 8. "*Peer review committee*" means one or more persons acting in a peer review capacity pursuant to this chapter.

9. "*Malpractice*" means any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a licensee in the course of practice of the licensee's occupation or profession, pursuant to this chapter.

87 Acts, ch 165, §3 SF 509
Subsection 1, paragraph a amended

258A.5 Licensee disciplinary procedure—rule-making delegation.

1. Each licensing board may establish by rule licensee disciplinary procedures. Each licensing board may impose licensee discipline under these procedures.

2. Rules promulgated under subsection 1 of this section:

a. Shall comply with the provisions of chapter 17A.

b. Shall designate who may or shall initiate a licensee disciplinary investigation and a licensee disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what conditions, and shall state the procedures for review by the licensing board of findings of fact if a majority of the licensing board does not hear the disciplinary proceeding.

c. Shall state whether the procedures are an alternative to or an addition to the procedures stated in sections 114.22, 116.23, 117.35, 117.36, 118A.16, 147.58 to 147.71, 148.6 to 148.9, 153.23 to 153.30, 153.33, and 154A.23.

d. Shall specify methods by which the final decisions of the board relating to disciplinary proceedings shall be published.

87 Acts, ch 215, §45 HF 594
Subsection 2, paragraph c amended

CHAPTER 259

VOCATIONAL REHABILITATION

259.4 Duties of division.

The division of vocational rehabilitation shall:

1. Cooperate with the secretary of education in the administration of the federal acts cited in section 259.1.

2. Administer legislation pursuant to the federal acts cited in section 259.1, and direct the disbursement and administer the use of funds provided by the federal government and this state for the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

3. Study and make investigations relating to the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment and formulate plans for the vocational rehabilitation of such persons.

4. Make surveys with the cooperation of the state commissioner of labor and the state industrial commissioner to assist in the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

5. Maintain a record of persons disabled in industry or otherwise together with measures taken for their rehabilitation.

6. Utilize in the rehabilitation of persons disabled in industry or otherwise existing educational and other facilities as are advisable and practicable, including public and private educational institutions, public or private establishments, plants, factories, and the services of individuals specially qualified for the instruction and vocational rehabilitation of handicapped persons.

7. Promote the establishment and assist in the development of training agencies for the vocational rehabilitation of persons disabled in industry or otherwise.

8. Supervise the training of persons disabled in industry or otherwise and confer with their relatives and others concerning their vocational rehabilitation.

9. Attempt to place vocationally rehabilitated persons in suitable remunerative occupations, including supervision for a reasonable time after return to civil employment.

10. Utilize the facilities of public and private agencies as practicable in securing employment for persons disabled in industry or otherwise; and a public agency shall cooperate with the division for the purpose stated.

11. Cooperate with an agency of the federal government or of the state, or of a county or other municipal authority within the state, or any other agency, public or private, in carrying out the purposes of this chapter.

12. Do all things necessary to secure the rehabilitation of those entitled to the benefits of this chapter.

13. Report biennially to the governor the conditions of vocational rehabilitation within the state, designating the educational institutions, establishments, plants, factories, and other agencies in which training is being given, and include a detailed statement of the expenditures of the state and federal funds in the rehabilitation of persons disabled in industry or otherwise.

14. Provide services for the vocational rehabilitation of severely handicapped persons and others entitled to the benefits of this chapter, including the establishment and operation of rehabilitation facilities and workshops.

15. Provide rehabilitation services to homebound and other handicapped individuals who can wholly or substantially achieve an ability of self-help as to dispense or largely dispense with the need of an attendant.

16. Provide financial and other necessary assistance to public or private agencies in the development, expansion, operation, or maintenance of sheltered workshops or other rehabilitation facilities needed for the rehabilitation of the disabled.

17. Provide vocational rehabilitation services to socially disadvantaged persons who are substantially impaired in their ability to earn a living. This may include but is not limited to recipients of public assistance, inmates of correctional institutions or rejectees of the selective service system, who because of lack of training, experience, skills, or other factors which if corrected would lead to self-support instead of dependency.

87 Acts, ch 115, §37 SF 374
Subsection 2 amended

CHAPTER 260

BOARD OF EDUCATIONAL EXAMINERS

260.6 Certificates required.

The board of educational examiners shall issue certificates pursuant to sections 256.7, subsection 3, and 260.2. A person employed as an administrator, supervisor, school service person, or teacher in the public schools shall hold a certificate valid for the type of position in which the person is employed. Effective July 1, 1990, the board shall only issue an emergency temporary certificate or endorsement to an individual employed by a school district or nonpublic school after the board of that school district or authorities in charge of that nonpublic school certify to the board of educational examiners that the board or authorities attempted to employ a certificated or endorsed individual to fill the teaching vacancy and, if the vacancy is in a school district, the board also attempted to complete a sharing agreement with another school district for providing the classes or courses. An emergency temporary certificate or endorsement is valid for one year after its issuance and shall not be renewed.

87 Acts, ch 224, §33 HF 499
Section amended

260.9 Area education agency administrator's certificate.

The board of educational examiners shall adopt rules establishing a certificate for area education agency administrators. The area education agency administra-

tor's certificate shall be issued to an applicant who has met the requirements in two of the four following subsections:

1. Five years' experience in higher education administration at a two- or four-year college or university which is accredited by the north central association of colleges and secondary schools accrediting agency or which has been certified by the north central association of colleges and secondary schools accrediting agency as a candidate for accreditation by that agency or as a school giving satisfactory assurance that it has the potential for accreditation and is making progress which, if continued, will result in its achieving accreditation by that agency within a reasonable time; or an earned doctorate in higher education administration.

2. Five years' experience in special education, media services, or educational services administration; or an earned doctorate in special education, media services, or educational services or any subspecialty of these services.

3. Five years' experience in primary or secondary school education; or an earned doctorate in educational administration for the primary or secondary level; and five years' teaching experience at any educational level.

4. Five years' experience in business or other nonacademic career pursuit; or an earned doctorate in public administration or business administration.

A person shall not be issued a temporary or emergency certificate for more than one year; and an education agency shall not employ uncertificated administrators, or employ temporary or emergency certificated administrators for more than two consecutive years.

The provisions of this section relating to the certification of an area education agency administrator do not apply to persons holding a superintendent's certificate prior to July 1, 1975.

87 Acts, ch 17, §7 SF 271

Section affirmed and reenacted effective April 17, 1987; legislative findings; 87 Acts, ch 17, §1, 12 SF 271

260.20 National certification.

The board of educational examiners shall review the certification standards for teacher's certificates adopted by the national board for professional teaching standards, a nonprofit corporation created as a result of recommendations of the task force on teaching as a profession of the Carnegie forum on education and the economy. In those cases in which the standards required by the national board for an Iowa endorsement meet or exceed the requirements contained in rules adopted under this chapter for that endorsement, the board of educational examiners shall issue certificates to holders of certificates issued by the national board who request the certificate.

87 Acts, ch 224, §34 HF 499

NEW section

CHAPTER 261

COLLEGE AID COMMISSION

261.9 Definitions.

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

1. "Tuition grant" means an award by the state of Iowa to a qualified student under this division.

2. "Financial need" means the difference between the student's financial resources available, including those available from the student's parents as determined by a completed parents' confidential statement, and the student's anticipated expenses while attending the accredited private institution. Financial need shall be redetermined at least annually.

3. "Full-time resident student" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours. "Course of study" does not include correspondence courses.

4. "Qualified student" means a full-time resident student who has established financial need and who is making satisfactory progress toward graduation.

5. "Accredited private institution" means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, except for county hospitals as provided in paragraph "d" of this subsection, and

a. Which is accredited by the North Central Association of Colleges and Secondary Schools accrediting agency based on their requirements as of April 1, 1969, or

b. Which has been certified by the North Central Association of Colleges and Secondary Schools accrediting agency based on their requirements as of April 1, 1969, (1) as a candidate for accreditation by such agency or (2) as a school giving satisfactory assurance that it has the potential for accreditation and is making progress which, if continued, will result in its achieving accreditation by such agency within a reasonable time, or

c. Which has received letters from at least three Iowa institutions accredited by the North Central Association of Colleges and Secondary Schools accrediting agency based on their requirements as of April 1, 1969, stating that its credits are and have been accepted as if earned in an institution so accredited.

d. Which is a school of nursing accredited by the national league for nursing and approved by the board of nurse examiners, including such a school operated, controlled, and administered by a county public hospital.

e. Which was eligible to participate in the tuition grant program during the school year beginning July 1, 1986 under paragraph "c", and will continue to be eligible during the school year beginning July 1, 1987, and which is making satisfactory progress to achieve accreditation from the North Central Association of Colleges and Secondary Schools accrediting agency, and the institution meets the thirteen general institutional requirements of the North Central Association of Colleges and Secondary Schools accrediting agency by July 1, 1988 and meets the requirements for candidacy status of the North Central Association of Colleges and Secondary Schools accrediting agency by July 1, 1989, and attains full accreditation under a time period established by the North Central Association.

6. "Commission" means the college aid commission.

7. "Half-time resident student" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least six semester hours or the trimester or quarter equivalent of six semester hours. "Course of study" does not include correspondence courses.

87 Acts, ch 233, §455 SF 511
Subsection 5, NEW paragraph e

261.17 Vocational-technical tuition grants.

1. A vocational-technical tuition grant may be awarded to any resident of Iowa who is admitted and in attendance as a full-time student in a vocational-technical or career option program at an area school in the state, and who establishes financial need.

2. A qualified student may receive vocational-technical tuition grants for not more than four semesters, eight quarters or the equivalent of two full years of study.

3. The amount of a vocational-technical tuition grant shall not exceed the lesser of four hundred fifty dollars per year or the amount of the student's established financial need.

4. A vocational-technical tuition grant shall be awarded on an annual basis, requiring reapplication by the student for each year. Payments under the grant shall be allocated equally among the semesters or quarters of the year upon certification by the institution that the student is in full-time attendance in a vocational-technical or career option program, as defined under rules of the department of education. If the student discontinues attendance before the end of any term after receiving payment of the grant, the entire amount of any refund due that student, up to the amount of any payments made under the annual grant, shall be paid by the institution to the state.

5. If a student receives financial aid under any other program, the full amount of that financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for that period.

6. The commission shall administer this program and shall:

a. Provide application forms for distribution to students by Iowa high schools and area schools.

b. Adopt rules for determining financial need, defining residence for the purposes of this section, processing and approving applications for grants and determining priority for grants.

c. Approve and award grants on an annual basis.

d. Make an annual report to the governor and general assembly.

7. Each applicant, in accordance with the rules established by the commission, shall:

a. Complete and file an application for a vocational-technical tuition grant.

b. Be responsible for the submission of the financial information required for evaluation of the applicant's need for a grant, on forms determined by the commission.

c. Report promptly to the commission any information requested.

d. Submit a new application and financial statement for re-evaluation of the applicant's eligibility to receive a second-year renewal of the grant.

87 Acts, ch 233, §456 SF 511
Subsections 1 and 4 amended

261.18 Subvention program.

1. There is established a subvention program for resident students who are enrolled in the university of osteopathic medicine and health sciences of Des Moines, Iowa. The subvention program shall be administered by the commission in the manner provided in this section and section 261.19. The commission shall initiate an affirmative action program to ensure equal opportunity for participation by women, men, and minority students in the program provided for in this section and section 261.19.

2. In making a final determination of who is a resident of Iowa, the commission shall adopt rules for the academic year commencing in 1976 and for each academic year thereafter consistent with those followed for determining Iowa resident students in section 261.15 and be subject to the provisions of chapter 17A.

3. Of the funds appropriated for the subvention program, the commission shall provide three thousand dollars of subvention to the university of osteopathic medicine and health sciences for each Iowa student, to be credited against the tuition charged for the Iowa student by the university of osteopathic medicine and health sciences, and the remaining funds shall be allocated to the university of osteopathic medicine and health sciences.

87 Acts, ch 233, §457 SF 511
NEW subsection 3

261.19 Payment of subvention.

The registrar of the university of osteopathic medicine and health sciences shall file, not later than August 1 of each year, a certificate of enrollment which shall

include the number, names, and addresses of all students enrolled, by class, and shall indicate which students are resident students. If the number of resident students does not equal thirty percent of the total enrollment of a class, the commission shall deduct an amount which equals the actual state contribution per student for each class member under the required percentage. The commission shall compute the amount of the subvention and shall transmit the funds to the university of osteopathic medicine and health sciences by August 15 of each year for which funds are appropriated by the general assembly.

87 Acts, ch 115, §38 SF 374
Section amended

261.25 Appropriations—standing limited.

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of twenty-four million three hundred nineteen thousand eighty-four dollars for tuition grants.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of four hundred thousand dollars for scholarships.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of six hundred seventy-two thousand four hundred seventy-two dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

It is the intent of the general assembly to extend the tuition grant program beginning July 1, 1977 to the half-time students as provided in this Act* taking at least six semester hours or the trimester or quarter equivalent in the school year beginning in the fall of 1977 and limited to a maximum of five hundred thousand dollars for these half-time students unless this amount is changed by legislative action. It is the further intent to extend eligibility for the tuition grant program to nursing students as defined in this Act beginning July 1, 1977.

87 Acts, ch 233, §458 SF 511

Appropriation for vocational-technical grants for fiscal year beginning July 1, 1987; 87 Acts, ch 233, §415 SF 511

*See 66 GA, ch 1196

Subsections 1 and 2 amended

261.37 Duties.

The duties of the commission under this division shall be as follows:

1. To review the Iowa guaranteed student loan program.

2. To review and make disposition of all applications for the guarantee of student loans.

3. Collect an insurance premium of not more than one percent per annum of the principal amount of any loan guaranteed, beginning with the date of disbursement and ending one year after the date on which the borrower expects to complete the course of study for which the loan was made. Such premium shall be collected by the lender upon the disbursement of the loan and shall be remitted promptly to the commission.

4. To enter into all necessary agreements with the United States secretary of education as required for the purpose of receiving full benefit of the state program incentives offered pursuant to the Higher Education Act of 1965.

5. To promulgate rules pursuant to chapter 17A to implement the provisions of this division including establishing standards for educational institutions, lenders and individuals to become eligible institutions, lenders and borrowers. The rules and standards established shall be consistent with the requirements provided in the Higher Education Act of 1965.

6. To reimburse eligible lenders for one hundred percent of the principal and accrued interest on defaulted loans guaranteed by the commission upon receipt of written notice of such default accompanied by evidence that the lender has exercised the required degree of diligence in efforts to collect the loan.

7. To establish an effective system for the collection of delinquent loans, including the adoption of an agreement with the Iowa department of revenue and finance to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed student or parental loan made under this division. The commission shall adopt rules under chapter 17A necessary to assist the department of revenue and finance in the implementation of the student loan setoff program as established under section 421.17, subsection 23.

8. To develop and disseminate informational and educational materials to lenders, postsecondary institutions and borrowers. The commission shall provide applicants, as deemed necessary by the commission, with information about the past default rate of borrowers by postsecondary institutions.

9. To develop all forms necessary to the proper administration of the guaranteed student loan program and provide supplies of such forms to participating lenders and postsecondary institutions.

10. To report annually to the governor and the general assembly on the status of the guaranteed student loan program.

11. To implement all possible assistance to eligible lenders for the purpose of easing the workload entailed in participation in the guaranteed student loan program.

87 Acts, ch 233, §459 SF 511
Subsection 8 amended

261.45 Guaranteed loan payment program.

There is established a guaranteed student loan payment program to be administered by the commission. An individual who meets all of the following conditions is eligible for reimbursement payments under the program if the individual:

1. Is a teacher employed on a full-time basis under sections 279.13 through 279.19 in a school district in this state, is a teacher in an approved nonpublic school in this state, or is a certified teacher at the Iowa braille and sight-saving school or the Iowa school for the deaf.

2. Has an outstanding debt with an eligible lender under the Iowa guaranteed student loan program as of the beginning of a school year.

3. Has never defaulted on a loan guaranteed by the commission or by the federal government.

4. Teaches one or more of the following during that school year:

- a. A sequential mathematics course at the advanced algebra level or higher.
- b. A chemistry, advanced chemistry, physics or advanced physics course.

5. Graduated from college after January 1, 1983 with a major in mathematics or science.

The commission shall adopt rules under chapter 17A to provide for the administration of this program.

There is appropriated from the general fund of the state to the Iowa college aid commission, the sum of eighty-five thousand dollars, or as much thereof as is necessary, for the fiscal year beginning July 1, 1987 and each succeeding fiscal year, to make the reimbursement payments required under this section.

Maximum annual reimbursement payments to an eligible teacher for loan repayments made during a school year shall be equal to one thousand dollars or the remainder of a loan, whichever is less. Total payments for an eligible teacher shall not exceed six thousand dollars. If a teacher fails to complete a year of

instruction in a course listed in subsection 4, the teacher shall not be reimbursed for loan repayments made during that school year.

87 Acts, ch 233, §460 SF 511
Unnumbered paragraph 3 amended

261.63 Appropriation.

Commencing July 1, 1987, there is appropriated from the general fund of the state to the commission for each fiscal year the sum of eight hundred thousand dollars for supplemental grants.

87 Acts, ch 233, §462 SF 511
Section amended

261.85 Appropriation.

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million one hundred fifty thousand dollars for the work-study program.

From moneys appropriated in this section, one million one hundred fifty thousand dollars shall be allocated to institutions of higher education under the state board of regents and merged area schools and the remaining one million dollars shall be allocated by the commission on the basis of need as determined by the portion of the federal formula for distribution of work study funds that relates to the current need of institutions.

87 Acts, ch 233, §463 SF 511
NEW section

CHAPTER 261C

POSTSECONDARY ENROLLMENT OPTIONS

Chapter 261C is repealed effective June 30, 1990;
87 Acts, ch 224, §80 HF 499

261C.1 Title.

This chapter may be cited as the "*Postsecondary Enrollment Options Act*".

87 Acts, ch 224, §35 HF 499
NEW section

261C.2 Policy.

It is the policy of this state to promote rigorous academic pursuits and to provide a wider variety of options to high school pupils by enabling eleventh and twelfth grade pupils to enroll part time in nonsectarian courses in eligible postsecondary institutions of higher learning in this state.

87 Acts, ch 224, §36 HF 499
NEW section

261C.3 Definitions.

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

1. "*Eligible postsecondary institution*" means an institution of higher learning under the control of the state board of regents, an area school established under chapter 280A, or an accredited private institution as defined in section 261.9, subsection 5.
2. "*Eligible pupil*" means a pupil classified by the board of directors of a school district as an eleventh or twelfth grade pupil during the period the pupil is participating in the enrollment option provided under this chapter.

87 Acts, ch 224, §37 HF 499
NEW section

261C.4 Authorization.

An eligible pupil may make application to an eligible institution to allow the eligible pupil to enroll for academic credit in a nonsectarian course offered at that

eligible institution. A comparable course must not be offered by the school district in which the pupil is enrolled. If an eligible institution accepts an eligible pupil for enrollment under this section, the institution shall send written notice to the pupil, the pupil's school district, and the department of education. The notice shall list the course, the clock hours the pupil will be attending the course, and the number of hours of postsecondary academic credit that the eligible pupil will receive from the eligible institution upon successful completion of the course.

87 Acts, ch 224, §38 HF 499
NEW section

261C.5 High school credits.

A school district may grant high school academic credit to an eligible pupil enrolled in a course under this chapter if the eligible pupil successfully completes the course as determined by the eligible institution. The board of directors of the school district shall determine the number of high school credits that shall be granted to an eligible pupil who successfully completes a course.

The high school credits granted to an eligible pupil under this section shall count toward the graduation requirements and subject area requirements of the school district of residence of the eligible pupil. Evidence of successful completion of each course and high school credits and postsecondary academic credits received shall be included in the pupil's high school transcript.

87 Acts, ch 224, §39 HF 499
NEW section

261C.6 School district payments.

Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to an eligible postsecondary institution that has enrolled its resident eligible pupils under this chapter. The amount of tuition reimbursement for each separate course shall equal the lesser of:

1. The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.
2. Two hundred dollars.

A pupil is not eligible to enroll on a full-time basis in an eligible postsecondary institution and receive payment for all courses in which a student is enrolled. If an eligible postsecondary institution is an area school established under chapter 280A, the contact hours of a pupil for which a tuition reimbursement amount is received are not contact hours eligible for general aid under chapter 286A.

87 Acts, ch 224, §40 HF 499
NEW section

261C.7 Transportation.

The parent or guardian of an eligible pupil who has enrolled in and is attending an eligible postsecondary institution under this chapter shall furnish transportation to and from the eligible postsecondary institution for the pupil.

87 Acts, ch 224, §41 HF 499
NEW section

261C.8 Prohibition on charges.

An eligible postsecondary institution that enrolls an eligible pupil under this chapter shall not charge that pupil for tuition, textbooks, materials, or fees

directly related to the course in which the pupil is enrolled except that the pupil may be required to purchase equipment that becomes the property of the pupil.

87 Acts, ch 224, §42 HF 499
NEW section

261C.9 Pupil enrollment.

Payments shall not be made under section 261C.6 if the eligible pupil is enrolled on a full-time basis in the pupil's school district of residence as well as enrolling in a course or program in an eligible postsecondary institution.

87 Acts, ch 224, §43 HF 499
NEW section

CHAPTER 262

STATE BOARD OF REGENTS

Restrictions on South Africa-related investments and deposits
by state board of regents; see ch 12A
Agricultural health and safety service pilot program for two years;
county quotas for indigent patient program; organ transplant policy;
limit to medically necessary abortions;
87 Acts, ch 233, §408 SF 411

262.9 Powers and duties.

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.
2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight-saving school and the state school for the deaf, who are certificated pursuant to chapter 260. In following those sections in chapter 279, the references to boards of directors of school districts shall be interpreted to apply to the board of regents.
3. Make rules for admission to and for the government of said institutions, not inconsistent with law.
4. Manage and control the property, both real and personal, belonging to said institutions.
5. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board may recommend and subject to the approval of the executive council. If real estate subject to sale hereunder has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents which, with the prior approval of the executive council, may be used to purchase other real estate and buildings, and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law.
6. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.

7. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa State University of science and technology, nor the permanent funds of the University of Iowa derived under Acts of Congress, be diminished.

8. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

9. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

10. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. That the letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

11. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

12. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

13. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

14. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

The state board of regents may make payment to an attorney or counselor for services rendered prior to July 1, 1978 to the state board of regents in connection with its responsibilities as a public employer pursuant to chapter 20.

15. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

16. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why

the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

17. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on the increase in tuition for a fiscal year shall be made no later than the regular meeting held in November of the preceding fiscal year. The regular meeting held in November shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during the period in which classes have been suspended for Thanksgiving vacation.

18. Adopt policies and procedures for the use of telecommunications as an instructional tool at its institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

87 Acts, ch 191, §1 HF 460; 87 Acts, ch 233, §464, 465 SF 511; 87 Acts, ch 207, §6 SF 333
Grants for staff development programs to assist teachers and administrators in use of telecommunications as instructional tool; 87 Acts, ch 207, §5 SF 333
Subsection 2 amended
Subsection 15 stricken and rewritten
NEW subsection 17
NEW subsection 18

262.44 Areas set aside for improvement.

The state board of regents is authorized to:

1. Set aside and use portions of the respective campuses of the institutions of higher education under its control, namely, the state university of Iowa, the Iowa state university of science and technology, and the university of northern Iowa, as the board determines are suitable for the acquisition or construction of self-liquidating and revenue producing buildings and facilities which the board deems necessary for the students and suitable for the purposes for which the institutions were established including without limitation: Student unions, recreational buildings, auditoriums, stadiums, field houses, athletic buildings and areas, parking structures and areas, electric, heating, sewage treatment and communication utilities, research equipment and additions to or alterations of existing buildings or structures.

2. Acquire by any lawful means additional land deemed by the board to be desirable and suitable for any or all of the aforesaid purposes.

3. Construct, equip, furnish, maintain, operate, manage and control any or all of the buildings, structures, facilities, areas, additions or improvements hereinbefore enumerated.

87 Acts, ch 233, §466, 467 SF 511
Subsection 1, unnumbered paragraph 1 amended
Subsection 1, unnumbered paragraph 2 stricken

262.61 Accounts.

A certified copy of each resolution providing for the issuance of bonds or notes under this division shall be filed with the treasurer of the institution on behalf of which the bonds or notes are issued and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds or notes in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. All rates, fees or rentals collected for the use of and services provided by the residence halls and dormitories, including dining and other incidental facilities therefor, at each institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this division and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds or

notes. It shall be the duty of the treasurer of each institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds or notes in accordance with the directions and covenants of the resolution authorizing the issuance thereof.

If the amount of bonds or notes issued under this chapter exceeds the actual costs of the projects for which the bonds or notes were issued, the amount of the difference shall be used to pay the principal and interest due on bonds or notes issued under this chapter.

87 Acts, ch 233, §468 SF 511
NEW unnumbered paragraph 2

CHAPTER 262A

STATE UNIVERSITIES BUILDINGS, FACILITIES AND SERVICES—REVENUE BONDS

262A.9 Bond fund account.

A certified copy of each resolution providing for the issuance of bonds under this chapter shall be filed with the treasurer of the institution on behalf of which the bonds are issued and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. A sufficient portion of the student fees and charges and institutional income received by each institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this chapter and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds. It shall be the duty of the treasurer of each institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds in accordance with the directions and covenants of the resolution authorizing the issuance thereof.

If the amount of bonds issued under this chapter exceeds the actual costs of the projects for which bonds were issued, the amount of the difference shall be used to pay the principal and interest due on bonds issued under this chapter.

87 Acts, ch 233, §469 SF 511
NEW unnumbered paragraph 2

CHAPTER 263

UNIVERSITY OF IOWA

Agricultural health and safety service pilot program
for two years; county quotas for indigent patient program;
organ transplant policy; limit to medically necessary abortions;

87 Acts, ch 233, §408 SF 511

263.14 through 263.16. Reserved.

CENTER FOR HEALTH EFFECTS OF
ENVIRONMENTAL CONTAMINATION

263.17 Center for health effects of environmental contamination.

1. The state board of regents shall establish and maintain at Iowa City as an integral part of the State University of Iowa the center for health effects of environmental contamination, having as its object the determination of the levels of environmental contamination which can be specifically associated with human health effects.

2. a. The center shall be a cooperative effort of representatives of the following organizations:

(1) The State University of Iowa department of preventative medicine and environmental health.

(2) The State University of Iowa department of pediatrics of the college of medicine.

(3) The state hygienic laboratory.

(4) The institute of agricultural medicine.

(5) The Iowa cancer center.

(6) The department of civil and environmental engineering.

(7) Appropriate clinical and basic science departments.

(8) The college of law.

(9) The college of liberal arts and sciences.

(10) The Iowa department of public health.

(11) The department of natural resources.

(12) The department of agriculture and land stewardship.

b. The active participation of the national cancer institute, the agency for toxic substances and disease registries, the national center for disease control, the United States environmental protection agency, and the United States geological survey, shall also be sought and encouraged.

3. The center may:

a. Assemble all pertinent laboratory data on the presence and concentration of contaminants in soil, air, water, and food, and develop a data retrieval system to allow the findings to be easily accessed by exposed populations.

b. Make use of data from the existing cancer and birth defect statewide recording systems and develop similar recording systems for specific organ diseases which are suspected to be caused by exposure to environmental toxins.

c. Develop registries of persons known to be exposed to environmental hazards so that the health status of these persons may be examined over time.

d. Develop highly sensitive biomedical assays which may be used in exposed persons to determine early evidence of adverse health effects.

e. Perform epidemiologic studies to relate occurrence of a disease to contaminant exposure and to ensure that other factors known to cause the disease in question can be ruled out.

f. Foster relationships and ensure the exchange of information with other teaching institutions or laboratories in the state which are concerned with the many forms of environmental contamination.

g. Implement programs of professional education and training of medical students, physicians, nurses, scientists, and technicians in the causes and prevention of environmentally induced disease.

h. Implement public education programs to inform persons of research results and the significance of the studies.

i. Respond as requested to any branch of government for consultation in the drafting of laws and regulations to reduce contamination of the environment.

4. An advisory committee consisting of one representative of each of the organizations enumerated in subsection 2, paragraph "a", a representative of the Iowa department of public health, and a representative of the department of natural resources is established. The advisory committee shall:

a. Employ, as a state employee, a full-time director to operate the center. The director shall coordinate the efforts of the heads of each of the major divisions of laboratory analysis, epidemiology and biostatistics, biomedical assays, and exposure modeling and shall also coordinate the efforts of professional and support staff in the operation of the center.

b. Submit an annual report of the activities of the center to the legislative council of the general assembly by January 15 of each year.

5. The center shall maintain the confidentiality of any information obtained from existing registries and from participants in research programs. Specific

research projects involving human subjects shall be approved by the State University of Iowa institutional review board.

6. The center may solicit, accept, and administer moneys appropriated to the center by a public or private agency.

87 Acts, ch 225, §228 HF 631
NEW section

CHAPTER 263A

MEDICAL AND HOSPITAL BUILDINGS AT UNIVERSITY OF IOWA

263A.7 Accounts of all funds separate.

A certified copy of each resolution providing for the issuance of bonds or notes under this chapter shall be filed with the treasurer of the institution and it shall be the duty of said treasurer to keep and maintain separate accounts for each issue of bonds or notes in accordance with the covenants and directions set out in the resolution providing for the issuance thereof. A sufficient portion of the hospital income received by the institution shall be held in trust by the treasurer thereof, separate and apart from all other funds, to be used solely and only for the purposes specified in this chapter and as may be required and provided for by the proceedings of the board authorizing the issuance of bonds or notes. It shall be the duty of the treasurer of the institution to disburse funds from the proper account for the payment of the principal of and interest on the bonds or notes in accordance with the directions and covenants of the resolution authorizing the issuance thereof.

If the amount of bonds or notes issued under this chapter exceeds the actual costs of the projects for which the bonds or notes were issued, the amount of the difference shall be used to pay the principal and interest due on bonds or notes issued under this chapter.

87 Acts, ch 233, §470 SF 511
NEW unnumbered paragraph 2

CHAPTER 266

IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

266.37 Use of corrections department institutional facilities and resources.

Iowa State University of science and technology shall use resources, including property, facilities, labor, and services, connected with institutions listed in section 246.102, under the authority of the Iowa department of corrections, to the extent practicable, for research, development, and testing of technological, horticultural, biological, and economic factors involved in improving the performance of Iowa agricultural products. However, use by the university is subject to the approval of the director of the department of corrections.

87 Acts, ch 139, §3 HF 241
NEW section

266.38 Soil test interpretation.

The Iowa cooperative extension service in agriculture and home economics shall develop and publish material on the interpretation of the results of soil tests. The material shall also feature the danger to groundwater quality from the overuse of fertilizers and pesticides. The material shall be available from the

service at cost and any person providing soil tests for agricultural or horticultural purposes shall provide the material to the customer with the soil test results.

87 Acts, ch 225, §229 HF 631
NEW section

266.39 Leopold center for sustainable agriculture.

1. For the purposes of this section, "*sustainable agriculture*" means the appropriate use of crop and livestock systems and agricultural inputs supporting those activities which maintain economic and social viability while preserving the high productivity and quality of Iowa's land.

2. The Leopold center for sustainable agriculture is established in the Iowa agricultural and home economics experiment station at Iowa State University of science and technology. The center shall conduct and sponsor research to identify and reduce negative environmental and socio-economic impacts of agricultural practices. The center also shall research and assist in developing emerging alternative practices that are consistent with a sustainable agriculture. The center shall develop in association with the Iowa cooperative extension service in agriculture and home economics an educational framework to inform the agricultural community and the general public of its findings.

3. An advisory board is established consisting of the following members:

a. Three persons from Iowa State University of science and technology, appointed by its president.

b. Two persons from the State University of Iowa, appointed by its president.

c. Two persons from the University of Northern Iowa, appointed by its president.

d. Two representatives of private colleges and universities within the state, to be nominated by the Iowa association of independent colleges and universities, and appointed by the Iowa coordinating council for post-high school education.

e. One representative of the department of agriculture and land stewardship, appointed by the secretary of agriculture.

f. One representative of the department of natural resources, appointed by the director.

g. One man and one woman, actively engaged in agricultural production, appointed by the state soil conservation committee.

The terms of the members shall begin and end as provided in section 69.19 and any vacancy shall be filled by the original appointing authority. The terms shall be for four years and shall be staggered as determined by the president of Iowa State University of science and technology.

4. The Iowa agricultural and home economics experiment station shall employ a director for the center, who shall be appointed by the president of Iowa State University of science and technology. The director of the center shall employ the necessary research and support staff. The director and staff shall be employees of Iowa State University of science and technology. No more than five hundred thousand dollars of the funds received from the agriculture management account annually shall be expended by the center for the salaries and benefits of the employees of the center, including the salary and benefits of the director. The remainder of the funds received from the agriculture management account shall be used to sponsor research grants and projects on a competitive basis from Iowa colleges and universities and private nonprofit agencies and foundations. The center may also solicit additional grants and funding from public and private nonprofit agencies and foundations.

The director shall prepare an annual report.

5. The board shall provide the president of Iowa State University of science and technology with a list of three candidates from which the director shall be

selected. The board shall provide an additional list of three candidates if requested by the president. The board shall advise the director in the development of a budget, on the policies and procedures of the center, in the funding of research grant proposals, and regarding program planning and review.

87 Acts, ch 225, §230 HF 631
NEW section

CHAPTER 268

UNIVERSITY OF NORTHERN IOWA

268.4 Small business assistance center for the safe and economic management of solid waste and hazardous substances.

1. The small business assistance center for the safe and economic management of solid waste and hazardous substances is established at the University of Northern Iowa. The University of Northern Iowa, in cooperation with the department of natural resources, shall develop and implement a program which provides the following:

a. Information regarding the safe use and economic management of solid waste and hazardous substances to small businesses which generate the substances.

b. Dissemination of information to public and private agencies regarding state and federal solid waste and hazardous substances regulations, and assistance in achieving compliance with the regulations.

c. Advice and consultation in the proper storage, handling, treatment, reuse, recycling, and disposal methods of solid waste and hazardous substances.

d. Identification of the advantages of proper substance management relative to liability and operational costs of a particular small business.

e. Assistance in the providing of capital formation in order to comply with state and federal regulations.

2. *a.* An advisory committee to the center is established, consisting of a representative of each of the following organizations:

- (1) The Iowa department of economic development.
- (2) The small business development commission.
- (3) The University of Northern Iowa.
- (4) The State University of Iowa.
- (5) Iowa State University of science and technology.
- (6) The department of natural resources.

b. The active participation of representatives of small businesses in the state shall also be sought and encouraged.

3. Information obtained or compiled by the center shall be disseminated directly to the Iowa department of economic development, the small business development centers, and other public and private agencies with interest in the safe and economic management of solid waste and hazardous substances.

4. The center may solicit, accept, and administer moneys appropriated to the center by a public or private agency.

87 Acts, ch 225, §403 HF 631
See also §455B.484 (13)
NEW section

CHAPTER 271

OAKDALE CAMPUS

271.6 Integrated treatment of university hospital patients.

The authorities of the Oakdale campus may authorize patients for admission to the hospital on the Oakdale campus who are referred from the university hospitals and who shall retain the same status, classification, and authorization for care which they had at the university hospitals. Patients referred from the university hospitals to the Oakdale campus shall be deemed to be patients of the university hospitals. Chapters 255 and 255A and operating policies of the university hospitals shall apply to the patients and to the payment for their care the same as the provisions apply to patients who are treated on the premises of the university hospitals.

87 Acts, ch 233, §473 SF 511
Section amended

CHAPTER 273

AREA EDUCATION AGENCY

273.1 Intent.

It is the intent of the general assembly to provide an effective, efficient, and economical means of identifying and serving children from under five years of age through grade twelve who require special education and any other children requiring special education as defined in section 281.2; to provide for media services and other programs and services for pupils in grades kindergarten through twelve and children requiring special education as defined in section 281.2; to provide a method of financing the programs and services; and to avoid a duplication of programs and services provided by any other school corporation in the state; and to provide services to school districts under a contract with those school districts.

87 Acts, ch 224, §44 HF 499
Section amended

273.2 Area education agency established—powers—services and programs.

There are established throughout the state fifteen area education agencies, each of which is governed by an area education agency board of directors. The boundaries of an area education agency shall not divide a school district. The director of the department of education shall change boundaries of area education agencies to take into account mergers of local school districts and changes in

boundaries of local school districts, when necessary to maintain the policy of this chapter that a local school district shall not be a part of more than one area education agency.

An area education agency established under this chapter is a body politic as a school corporation for the purpose of exercising powers granted under this chapter, and may sue and be sued. An area education agency may hold property and execute lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease exceeds ten years or the purchase price of the property to be acquired pursuant to a lease-purchase agreement exceeds twenty-five thousand dollars, the area education agency shall conduct a public hearing on the proposed lease-purchase agreement and receive approval from the area education agency board of directors and the director of the department of education before entering into the agreement.

The area education agency board shall furnish educational services and programs as provided in sections 273.1 to 273.9 and chapter 281 to the pupils enrolled in public or nonpublic schools located within its boundaries which are on the list of accredited schools pursuant to section 256.11. The programs and services provided shall be at least commensurate with programs and services existing on July 1, 1974. The programs and services provided to pupils enrolled in nonpublic schools shall be comparable to programs and services provided to pupils enrolled in public schools within constitutional guidelines.

The area education agency board shall provide for special education services and media services for the local school districts in the area and shall encourage and assist school districts in the area to establish programs for gifted and talented children.

The area education agency board may provide for the following programs and services to local school districts within the limits of funds available:

1. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa.

2. Educational data processing pursuant to section 256.9, subsection 11.

3. Research, demonstration projects and models, and educational planning for children under five years of age through grade twelve and children requiring special education as defined in section 281.2 as approved by the state board of education.

4. Auxiliary services for nonpublic school pupils as provided in section 256.12. However, if auxiliary services are provided their funding shall be based on the type of service provided.

5. Other educational programs and services for children under five years through grade twelve and children requiring special education as defined in section 281.2 and for employees of school districts and area education agencies as approved by the state board of education.

The board of directors of an area education agency shall not establish programs and services which duplicate programs and services which are or may be provided by the area schools under the provisions of chapter 280A. An area education agency shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

87 Acts, ch 115, §39 SF 374

State board of education to develop plans for redrawing boundary lines; §256.7(7)

Unnumbered paragraph 3, and subsections 2 and 4 amended

273.3 Duties and powers of area education agency board.

The board in carrying out the provisions of section 273.2 shall:

1. Determine the policies of the area education agency for providing programs and services.
2. Be authorized to receive and expend money for providing programs and services as provided in sections 273.1 to 273.9, chapters 281 and 442. All costs incurred in providing the programs and services, including administrative costs, shall be paid from funds received pursuant to sections 273.1 to 273.9 and chapters 281 and 442.
3. Provide data and prepare reports as directed by the director of the department of education.
4. Provide for advisory committees as deemed necessary.
5. Be authorized, subject to rules and regulations of the state board of education, to provide directly or by contractual arrangement with public or private agencies for special education programs and services, media services, and educational programs and services requested by the local boards of education as provided in this chapter, including but not limited to contracts for the area education agency to provide programs or services to the local school districts and contracts for local school districts, other educational agencies, and public and private agencies to provide programs and services to the local school districts in the area education agency in lieu of the area education agency providing the services. Contracts may be made with public or private agencies located outside the state if the programs and services comply with the rules of the state board.
6. Area education agencies may co-operate and contract between themselves and with other public agencies to provide special education programs and services, media services, and educational services to schools and children residing within their respective areas. Area education agencies may provide print and nonprint materials to public and private colleges and universities that have teacher education programs approved by the state board of education.
7. Be authorized to lease, subject to the approval of the director of the department of education and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than ten years and with an annual cost of less than twenty-five thousand dollars does not require the approval of the director. If a lease requires approval, the director shall not approve the lease until the director is satisfied by investigation that public school corporations within the area do not have suitable facilities available.
8. Be authorized, subject to the approval of the director of the department of education, to enter into agreements for the joint use of personnel, buildings, facilities, supplies, and equipment with school corporations as deemed necessary to provide authorized programs and services.
9. Be authorized to make application for, accept, and expend state and federal funds that are available for programs of educational benefit approved by the director of the department of education, and cooperate with the department in the manner provided in federal-state plans or department rules in the effectuation and administration of programs approved by the director, or approved by other educational agencies, which agencies have been approved as state educational authorities.
10. Be authorized to perform all other acts necessary to carry out the provisions and intent of this chapter.
11. Employ personnel to carry out the functions of the area education agency which shall include the employment of an administrator who shall possess a certificate issued under section 260.9. The administrator shall be employed pursuant to section 279.20 and sections 279.23, 279.24 and 279.25. The salary for an area education agency administrator shall be established by the board based upon the previous experience and education of the administrator. The provisions of section 279.13 shall apply to the area education agency board and to all teachers employed by the area education agency. The provisions of sections 279.23,

279.24 and 279.25 shall apply to the area education board and to all administrators employed by the area education agency.

12. Prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 to 273.9 and chapter 281 within the limits of funds provided under section 281.9 and chapter 442. The board shall give notice of a public hearing on the proposed budget by publication in an official county newspaper in each county in the territory of the area education agency in which the principal place of business of a school district that is a part of the area education agency is located. The notice shall specify the date, which shall be not later than November 10 of each year, the time, and the location of the public hearing. The proposed budget as approved by the board shall then be submitted to the state board of education, on forms provided by the department, no later than December 1 preceding the next fiscal year for approval. The state board shall review the proposed budget of each area education agency and shall prior to January 1 either grant approval or return the budget without approval with comments of the state board included. Any unapproved budget shall be resubmitted to the state board for final approval.

13. Be authorized to pay, out of funds available to the board reasonable annual dues to an Iowa association of school boards. Membership shall be limited to those duly elected members of the area education agency board.

14. At the request of an employee through contractual agreement the board may arrange for the purchase of an individual annuity contract for any of its employees from any company the employee chooses that is authorized to do business in this state, and through an Iowa-licensed insurance agent that the employee selects, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due, and to become due, under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403b of the Internal Revenue Code of 1954, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums.

15. Be authorized to establish and pay all or any part of the cost of group health insurance plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the area education agency, from funds available to the board.

16. Meet at least annually with the members of the boards of directors of the merged areas in which the area education agency is located to discuss coordination of programs and services and other matters of mutual interest to the boards.

17. Be authorized to issue warrants and anticipatory warrants pursuant to chapter 74. The applicable rate of interest shall be determined pursuant to sections 74A.2, 74A.3, and 74A.7. This subsection shall not be construed to authorize a board to levy a tax.

18. Be authorized to issue school credit cards allowing area education agency employees to pay for the actual and necessary expenses incurred in the performance of work-related duties.

19. Pursuant to rules adopted by the state board of education, be authorized to charge user fees for certain materials and services that are not required by law or

by rules of the state board of education and are specifically requested by a school district or accredited nonpublic school.

87 Acts, ch 233, §474, 475 SF 511; 87 Acts, ch 115, §40 SF 374
 Accreditation takes effect beginning July 1, 1989; schools remain subject to the approval process in §257.25, Code 1985, until accredited; see §256.11(10)
 1986 amendment to subsection 15 retroactive to January 1, 1985, for tax years beginning on or after that date; 86 Acts, ch 1213, §11
 Needs assessment relating to use of telecommunications as an instructional tool; report July 1, 1989; 87 Acts, ch 207, §4
 Grants for staff development programs to assist teachers and administrators in use of telecommunications as instructional tool; 87 Acts, ch 207, §5 SF 333
 Subsection 6 amended
 Subsection 10 stricken and subsections 11–20 renumbered as 10–19
 Subsection 19 amended

273.7A Services to school districts.

The board of an area education agency may provide services to school districts located in the area education agency under contract with the school districts. These services may include, but are not limited to, superintendency services, personnel services, business management services, specialized maintenance services, and transportation services. In addition, the board of the area education agency may provide for furnishing expensive and specialized equipment for school districts. School districts shall pay to area education agencies the cost of providing the services.

The board of an area education agency may also provide services authorized to be performed by area education agencies to other area education agencies in this state and to provide a method of payment for these services.

87 Acts, ch 224, §45 HF 499
 NEW section

273.11 Appropriation for reimbursement of instructional costs of children in juvenile homes. Repealed by 87 Acts, ch 233, §486. SF 511 See §282.28–282.32.

CHAPTER 277

SCHOOL ELECTIONS

277.4 Nominations required.

Nomination papers for all candidates for election to office in each school district shall be filed with the secretary of the school board not more than sixty-five days, nor less than forty days prior to the election. Nomination petitions shall be filed not later than five o'clock p.m. on the last day for filing. If the school board secretary is not readily available during normal office hours, the secretary may designate a full-time employee of the school district who is ordinarily available to accept nomination papers under this section. Each candidate shall be nominated by a petition signed by not less than ten eligible electors of the district. The petition shall include the affidavit of the candidate being nominated, stating the candidate's name, place of residence, that such person is a candidate and is eligible for the office the candidate seeks, and that if elected the candidate will qualify for the office.

The secretary of the school board shall deliver all nomination petitions to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect with the commissioner at any time prior to five o'clock p.m. on the thirty-fifth day before the election.

87 Acts, ch 221, §32 HF 600
 Unnumbered paragraph 1 amended

277.27 Qualification.

A school officer or member of the board shall, at the time of election or appointment, be an eligible elector of the corporation or subdistrict. Notwith-

standing any contrary provision of the Code, a member of the board of directors of a school district shall not receive compensation directly from the school board.

87 Acts, ch 224, §46 HF 499
Section amended

CHAPTER 279

DIRECTORS—POWERS AND DUTIES

For student search restrictions, see chapter 808A
Optional waiver of satisfaction and performance
bonds; §12.44

279.1 Organization.

The board of directors of each school corporation shall meet and organize at the first regular meeting after a regular school election at some suitable place to be designated by the secretary. Notice of the place and hour of such meeting shall be given by the secretary to each member and each member-elect of the board.

Such organization shall be effected by the election of a president from the members of the board, who shall be entitled to vote as a member.

87 Acts, ch 244, §47 HF 499
Unnumbered paragraph 1 amended

279.7 Vacancies filled by special election—qualification—tenure.

In any case where a vacancy or vacancies occur among the elective officers or members of a school board and the remaining members of such board have not filled such vacancy within ten days after the occurrence thereof, or when the board is reduced below a quorum for any cause, the secretary of the board, or if there be no secretary, the area education agency administrator shall call a special election in the district, subdistrict, or subdistricts, as the case may be, to fill such vacancy or vacancies. The county commissioner of elections shall publish the notices required by law for such special elections, which election shall be held not sooner than thirty days nor later than forty days after the tenth day following the occurrence of the vacancy. In any case where the secretary fails for more than three days to call such election, the administrator shall call it.

Any appointment by the board to fill any vacancy in an elective office on or after the day notice has been given for a special election to fill such vacancy as provided herein shall be null and void.

In any case of a special election as provided herein to fill a vacancy occurring among the elective officers or members of a school board before the expiration of a full term, the person so elected shall qualify within ten days thereafter in the manner required by section 277.28 and shall hold office for the residue of the unexpired term and until a successor is elected, or appointed, and qualified.

Nomination petitions shall be filed in the manner provided in section 277.4, except that the petitions shall be filed not less than thirty days prior to the date set for the election.

87 Acts, ch 48, §1 SF 388
Unnumbered paragraph 4 amended

279.20 Superintendent—term.

The board of directors of a school district may employ a superintendent of schools for a term of not to exceed three years. However, the board's initial contract with a superintendent shall not exceed one year if the board is obligated to pay a former superintendent under an unexpired contract. The superintendent shall be the executive officer of the board and have such powers and duties as may

be prescribed by rules adopted by the board or by law. Boards of directors may jointly exercise the powers conferred by this section.

87 Acts, ch 224, §48 HF 499
Section amended

279.23 Continuing contract for administrators.

Contracts with administrators shall be in writing and shall contain all of the following:

1. The term of employment.
2. The length of time during the school year services are to be performed.
3. The compensation per week of five consecutive days or month of four consecutive weeks.
4. A statement that the contract is invalid if the administrator is under contract with another board of directors in this state covering the same period of time, until such contract shall have been released or terminated by its provisions.
5. Such other matters as may be agreed upon.

The contract shall be signed by the president and the administrator and shall be filed with the secretary of the board before the administrator enters upon performance of the contract. A contract shall not be tendered by an employing board to an administrator under its jurisdiction prior to March 15. A contract shall not be required to be signed by the administrator and returned to the board in less than twenty-one days after being tendered.

An administrator's contract shall be governed by the provisions of this section and sections 279.23A, 279.24, and 279.25 and not by section 279.13. For purposes of this section and sections 279.23A, 279.24, and 279.25, the term "administrator" includes school superintendents, assistant superintendents, educational directors, principals, assistant principals, and other certified school supervisors as defined under section 20.4.

87 Acts, ch 94, §1 SF 106
Unnumbered paragraph 3 amended

279.23A Evaluation criteria and procedures.

The board shall establish written evaluation criteria and shall establish and annually implement evaluation procedures. The board shall also establish written job descriptions for all supervisory positions.

87 Acts, ch 94, §2 SF 106
NEW section

279.24 Contract with administrators—automatic continuation or termination.

An administrator's contract shall remain in force and effect for the period stated in the contract. The contract shall be automatically continued in force and effect for one year beyond the end of its term, except as modified or terminated by mutual agreement of the board of directors and the administrator, or until terminated as hereinafter provided.

An administrator may file a written resignation with the secretary of the board on or before May 1 of each year or the date specified by the board for return of the contract, whichever date occurs first.

Administrators employed in a school district for less than two consecutive years are probationary administrators. However, a board may waive the probationary period for any administrator who has previously served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the administrator. If a board determines that it should terminate a probationary administrator's contract, the board shall notify the administrator not later than March 31 that the contract will not be renewed beyond the current year. The notice shall be in writing by letter, personally delivered, or mailed by certified mail. The notification shall be complete when received by the administrator. Within ten days after receiving the

notice, the administrator may request a private conference with the board to discuss the reasons for termination. The board's decision to terminate a probationary administrator's contract shall be final unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the administrator.

The board may, by majority vote of the membership of the board, cause the contract of an administrator to be terminated. If the board determines that it should consider the termination of a nonprobationary administrator's contract, the following procedure shall apply:

On or before March 31, the administrator shall be notified in writing by a letter personally delivered or mailed by certified mail that the board has voted to consider termination of the contract. The notification shall be complete when received by the administrator.

The notice shall state the specific reasons to be used by the board for considering termination which for all administrators except superintendents shall be for just cause.

Within five days after receipt of the written notice that the board has voted to consider termination of the contract, the administrator may request in writing to the secretary of the board that the notification be forwarded to the professional teaching practices commission along with a request that the professional teaching practices commission submit a list of five qualified hearing officers to the parties. Within three days from receipt of the list the parties shall select a hearing officer by alternately removing a name from the list until only one name remains. The person whose name remains shall be the hearing officer. The parties shall determine by lot which party shall remove the first name from the list. The hearing shall be held no sooner than ten days and not later than thirty days following the administrator's request unless the parties otherwise agree. If the administrator does not request a hearing, the board, not later than April 15, may determine the continuance or discontinuance of the contract. Board action shall be by majority roll call vote entered on the minutes of the meeting. Notice of board action shall be personally delivered or mailed to the administrator.

The hearing officer selected shall notify the secretary of the board and the administrator in writing concerning the date, time, and location of the hearing. The board may be represented by a legal representative, if any, and the administrator shall appear and may be represented by counsel or by representative, if any. A transcript or recording shall be made of the proceedings at the hearing. No school board member or administrator shall be liable for any damage to any administrator or board member if any statement made at the hearing is determined to be erroneous as long as the statement was made in good faith.

The hearing officer shall, within ten days following the date of the hearing, make a proposed decision as to whether or not the administrator should be dismissed, and shall give a copy of the proposed decision to the administrator and the school board. Findings of fact shall be prepared by the hearing officer. The proposed decision of the hearing officer shall become the final decision of the board unless within ten days after the filing of the decision the administrator files a written notice of appeal with the board, or the board on its own motion determines to review the decision.

If the administrator appeals to the board, or if the board determines on its own motion to review the proposed decision of the hearing officer, a private hearing shall be held before the board within five days after the petition for review, or motion for review, has been made or at such other time as the parties may agree. The private hearing shall not be subject to the provisions of chapter 21. The board may hear the case de novo upon the record as submitted before the hearing officer. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the board, an opportunity shall be afforded to each party to file exceptions, present briefs and present oral arguments to the

board which is to render the final decision. The secretary of the board shall give the administrator written notice of the time, place, and date of the hearing. The board shall meet within five days after the hearing to determine the question of continuance or discontinuance of the contract. The board shall make findings of fact which shall be based solely on the evidence in the record and on matters officially noticed in the record.

The decision of the board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

When the board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the administrator's contract. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 22. The secretary of the board shall immediately personally deliver or mail notice of the board's action to the administrator.

The administrator may within thirty days after notification by the board of discontinuance of the contract appeal to the district court of the county in which the administrative office of the school district is located.

The court may affirm the board action. The court shall reverse, modify, or grant any other appropriate relief from the board action, equitable or legal, and including declaratory relief, if substantial rights of the administrator have been prejudiced because the board action is:

1. In violation of constitutional or statutory provisions.
2. In excess of the statutory authority of the board.
3. In violation of board policy or rule.
4. Made upon unlawful procedure.
5. Affected by other error of law.
6. Unsupported by a preponderance of the evidence in the record made before the board when that record is reviewed as a whole.
7. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

87 Acts, ch 39, §1 SF 105
Subsection 6 amended

279.34 Financial statement—publication. Repealed by 87 Acts, ch 224, §78. HF 499 See §279.35, 279.36.

279.35 Publication of proceedings.

The proceedings of each regular, adjourned, or special meeting of the board, including the schedule of bills allowed, shall be published after the adjournment of the meeting in the manner provided in this section and section 279.36, and the publication of the schedule of the bills allowed shall include a list of claims allowed, including salary claims for services performed. The schedule of bills allowed may be published on a once monthly basis in lieu of publication with the proceedings of each meeting of the board. The list of claims allowed shall include the name of the person or firm making the claim, the purpose of the claim, and the amount of the claim. However, salaries paid to individuals regularly employed by the district shall only be published annually and the publication shall include the total amount of the annual salary of each employee. The secretary shall furnish

a copy of the proceedings to be published within two weeks following the adjournment of the meeting.

87 Acts, ch 224, §49 HF 499
Section stricken and rewritten

279.36 Publication procedures and fee.

The requirements of section 279.35 are satisfied by publication in at least one newspaper published in the district or, if there is none, in at least one newspaper having general circulation within the district.

For the fiscal year beginning July 1, 1987, the fee for publications required under section 279.35 shall not exceed three-fifths of the legal publication fee provided by statute for the publication of legal notices. For the fiscal year beginning July 1, 1988, the fee for the publications shall not exceed three-fourths of that legal publication fee. For the fiscal year beginning July 1, 1989, and each fiscal year thereafter, the fee for the publications shall be the legal publication fee provided by statute.

87 Acts, ch 224, §50 HF 499
Publication of legal notices; §618.11
Section stricken and rewritten

279.46 Retirement incentives—tax.

The board of directors of a school district may adopt a program for payment of a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging its employees to retire before the normal retirement date as defined in chapter 97B. The program is available only to employees between fifty-nine and sixty-five years of age who notify the board of directors prior to March 1 of the fiscal year that they intend to retire not later than the next following June 30. An employee retiring under this section shall apply for a retirement allowance under chapter 97B or chapter 294. If the total estimated accumulated cost to a school district of the bonus or other incentives for employees who retire under this section does not exceed the estimated savings in salaries and benefits for employees who replace the employees who retire under the program, the board may certify for levy a tax on all taxable property in the school district to pay the costs of the program provided in this section. The levy certified under this section is in addition to any other levy authorized for that school district by law and is not subject to budget limitations otherwise provided by law. A board may amend its certified budget during a fiscal year to provide for payments required under this section. Moneys received from the levy imposed under this section are miscellaneous income for purposes of chapter 442.

87 Acts, ch 224, §51 HF 499
NEW section

279.47 Telecommunications—participation by school districts in data base development.

The board of directors of each school district utilizing telecommunications as an instructional tool shall participate in procedures adopted by the state board of education under section 256.7, subsection 11.

87 Acts, ch 207, §2 SF 333
Grants for staff development programs to assist teachers and administrators in use of telecommunications as instructional tool; 87 Acts, ch 207, §5 SF 333
NEW section

279.48 Reserved.

CHAPTER 280

UNIFORM SCHOOL REQUIREMENTS

280.4 Medium of instruction—special instruction.

The medium of instruction in all secular subjects taught in both public and nonpublic schools shall be the English language, except when the use of a foreign

language is deemed appropriate in the teaching of any subject or when the student is non-English-speaking. When the student is non-English-speaking, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in the English language or a transitional bilingual program, until the student demonstrates a functional ability to speak, write, read and understand the English language. As used in this section, "non-English-speaking student" means a student whose native language is not English and whose inability or limited ability to speak, write or read English significantly impedes educational progress.

1. The board of directors of a school district may submit an application to the school budget review committee for funds provided by 1982 Iowa Acts, chapter 1260, section 47, for instruction in the English language, a transitional bilingual, or other special instruction program when support for the program from other federal, state or local sources is not available or is inadequate. The department of education shall review all applications for funding and provide recommendations to the school budget review committee regarding their disposition. The school budget review committee shall not grant funds to a public school for instruction in the English language, a transitional bilingual or other special instruction program unless the program offered by the public school is available to nonpublic school students in the district.

2. The department of education shall promulgate rules relating to the identification of non-English-speaking students who require special instruction under this section and to application procedures for funds available under this section.

3. Grants made to a school pursuant to this section shall not exceed four hundred dollars for each student in the program. A public school may receive funds for nonpublic school students attending the program offered by the public school. However, the amount granted for each nonpublic school student in a program shall not exceed the amount granted for each public school student in the program.

4. In order to provide funds for the excess costs of instruction of non-English-speaking students above the costs of instruction of pupils in a regular curriculum, students identified as non-English-speaking are assigned an additional weighting of two-tenths and that weighting shall be included in the weighted enrollment of the school district of residence.

87 Acts, ch 224, §52 HF 499
NEW subsection 4

280.13A Sharing interscholastic activities.

If a school district does not provide an interscholastic activity for its students, the board of directors of that school district may complete an agreement with another school district to provide for the eligibility of its students in interscholastic activities provided by that other school district. A copy of each agreement completed under this section shall be filed with the appropriate organization as organization is defined in section 280.13 not later than April 30 of the school year preceding the school year in which the agreement takes effect, unless an exception is granted by the organization for good cause. An agreement completed under this section shall be deemed approved unless denied by the governing organization within ten days after its receipt. A governing organization shall determine whether an agreement would substantially prejudice the interscholastic activities of other schools. An agreement denied by a governing board under this section may be appealed to the state board of education under chapter 290.

For the purpose of this section, "*substantial prejudice*" includes, but is not limited to, situations where shared interscholastic activities may result in an unfair domination of an interscholastic activity or substantial disruption of activity classifications and management.

It is not necessary that school districts that are parties to an agreement under this section must be engaged in sharing academic programming and receiving supplementary weighting under section 442.39.

87 Acts, ch 224, §53 HF 499
NEW section

280.15 Joint employment and sharing.

Two or more public school districts may jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment and facilities. Classes made available to students in the manner provided in this section shall be considered as complying with the requirements of section 275.1 relating to the maintenance of kindergarten and twelve grades by a school district. If students attend classes in another school district under this section under an agreement that provides for whole grade sharing, the boards of directors of districts entering into these agreements shall provide for sharing the costs and expenses as provided in sections 282.10 through 282.12.

87 Acts, ch 224, §54 HF 499
1987 amendment not applicable to sharing agreements signed before July 1, 1987; 87 Acts, ch 224, §79 HF 499
Section amended

280.16 Open enrollment.

For the school years commencing July 1, 1988 and July 1, 1989, a parent or guardian residing in a school district in which the high school offers fewer than forty-one curriculum units either on its own or under a sharing agreement that does not meet the criteria for section 282.11 may enroll the parent's or guardian's child in a public school in a contiguous school district in the manner provided in this section if the conditions specified in this section exist.

Not later than February 1 of the preceding school year, the parent or guardian shall send notification to the district of residence and to the department of education on forms prescribed by the department of education that the parent or guardian intends to enroll the parent's or guardian's child in a public school in a contiguous school district because the academic curriculum of the contiguous school district provides substantial educational opportunities for a pupil that are not available to that pupil in the district of residence. The notification shall list the educational opportunities that the parent or guardian believes are necessary for the child and shall describe the manner in which the contiguous district can provide those educational opportunities. The state board of education shall adopt rules under chapter 17A that define educational opportunity.

A request under this section is for a period not less than four years unless the pupil will graduate within the four-year period. However, if a parent or guardian chooses to reenroll the child in the district of residence, or to enroll the child in another school district, during the four-year period, the parent or guardian shall pay the maximum tuition fee to the district pursuant to section 282.24.

The board of directors of the district of residence shall approve or disapprove the request within thirty days of its receipt. The parent or guardian may appeal the decision of the board under chapter 290. If the parent or guardian appeals to the state board of education, the board of the district of residence must prove to the state board that the conditions listed in the request do not exist and the request of the parent or guardian is not valid.

Following approval of the transfer, the board of the district of residence shall transmit a copy of the form to the contiguous school district. The board of the contiguous school district shall enroll the pupil in a school in the contiguous district for the following school year unless the contiguous district does not have classroom space for the pupil.

The board of directors of the district of residence shall pay to the contiguous school district the lower district cost per pupil of the two districts for that school year. Quarterly payments shall be made to the contiguous district. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or

guardian is responsible for transporting the student without reimbursement to and from a point on a regular school bus route of the contiguous district.

A student who attends school in a contiguous school district is not eligible to participate in interscholastic athletic contests and athletic competitions during the first year of enrollment under this section except for an interscholastic sport in which the district of residence and the contiguous school district jointly participate.

87 Acts, ch 224, §55 HF 499

1987 amendment takes effect for school year beginning July 1, 1988; 87 Acts, ch 224, §79 HF 499
State board to study feasibility of allowing students to attend school in districts other than the district in which they reside; 87 Acts, ch 224, §76 HF 499
Section stricken and rewritten

280.18 Student achievement goals.

The board of directors of each school district shall adopt goals to improve student achievement and performance. Student achievement and performance can be measured by measuring the improvement of students' skills in reading, writing, speaking, listening, mathematics, reasoning, studying, and technological literacy.

In order to achieve the goal of improving student achievement and performance on a statewide basis, the board of directors of each school district shall adopt goals that will improve student achievement at each grade level in the skills listed in this section and other skills deemed important by the board. Not later than July 1, 1989, the board of each district shall transmit to the department of education its plans for achieving the goals it has adopted and the periodic assessment that will be used to determine whether its goals have been achieved. The committee appointed by the board under section 280.12 shall advise the board concerning the development of goals, the assessment process to be used, and the measurements to be used.

The periodic assessment used by a school district to determine whether its student achievement goals have been met shall use various measures for determination, of which standardized tests may be one. The board shall ensure that the achievement of goals for a grade level has been assessed at least once during every four-year period.

The board shall file assessment reports with the department of education and shall make copies of these reports available to the residents of the school district.

87 Acts, ch 224, §56 HF 499
NEW section

CHAPTER 280A

AREA VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES

State board of education to study governance structure of merged area schools; §256.7(7)

Department to establish standards for year beginning July 1, 1988, and thereafter; 86 Acts, ch 1246, §113

280A.22 Facilities levy by vote—borrowing—temporary cash reserve levy.

1. *a*. In addition to the tax authorized under section 280A.17, the voters in any merged area may at the annual school election vote a tax not exceeding twenty and one-fourth cents per thousand dollars of assessed value in any one year for a period not to exceed ten years for the purchase of grounds, construction of buildings, payment of debts contracted for the construction of buildings, purchase of buildings and equipment for buildings, and the acquisition of libraries, for the purpose of paying costs of utilities, and for the purpose of maintaining, remodeling, improving, or expanding the area vocational school or area community

college of the merged area. If the tax levy is approved under this section, the costs of utilities shall be paid from the proceeds of the levy. The tax shall be collected by the county treasurers and remitted to the treasurer of the merged area as provided in section 331.552, subsection 29. The proceeds of the tax shall be deposited in a separate and distinct fund to be known as the voted tax fund, to be paid out upon warrants drawn by the president and secretary of the board of directors of the merged area district for the payment of costs incurred in providing the school facilities for which the tax was voted.

b. In order to make immediately available to the merged area the proceeds of the voted tax hereinbefore authorized to be levied, the board of directors of any such merged area is hereby authorized, without the necessity for any further election, to borrow money and enter into loan agreements in anticipation of the collection of such tax, and such board shall, by resolution, provide for the levy of an annual tax, within the limits of the special voted tax hereinbefore authorized, sufficient to pay the amount of any such loan and the interest thereon to maturity as the same becomes due. A certified copy of this resolution shall be filed with the county auditors of the counties in which such merged area is located, and the filing thereof shall make it a duty of such auditors to enter annually this levy for collection until funds are realized to repay the loan and interest thereon in full. Said loan must mature within the number of years for which the tax has been voted and shall bear interest at a rate or rates not exceeding that permitted by chapter 74A. Any loan agreement entered into pursuant to authority herein contained shall be in such form as the board of directors shall by resolution provide and the loan shall be payable as to both principal and interest from the proceeds of the annual levy of the voted tax hereinbefore authorized, or so much thereof as will be sufficient to pay the loan and interest thereon. In furtherance of the foregoing the board of directors of such merged area may, with or without notice, negotiate and enter into a loan agreement or agreements with any bank, investment banker, trust company, insurance company or group thereof, whereunder the borrowing of the necessary funds may be assured and consummated. The proceeds of such loan shall be deposited in a special fund, to be kept separate and apart from all other funds of the merged area, and shall be paid out upon warrants drawn by the president and secretary of the board of directors to pay the cost of acquiring the school facilities for which the tax was voted.

c. If the boundary lines of a merged area are changed, the levy of the annual tax provided in this section sufficient to pay the amount due for a loan agreement and the interest on the loan agreement to maturity shall continue in any territory severed from the merged area until the loan with interest on the loan has been paid in full.

d. Nothing herein contained shall be construed to limit the authority of the board of directors to levy the full amount of the voted tax, but if and to whatever extent said tax is levied in any year in excess of the amount of principal and interest falling due in such year under any loan agreement, the first available proceeds thereof, to an amount sufficient to meet maturing installments of principal and interest under the loan agreement, shall be paid into the sinking fund for such loan before any of such taxes are otherwise made available to the merged area for other school purposes, and the amount required to be annually set aside to pay the principal of and interest on the money borrowed under such loan agreement shall constitute a first charge upon all of the proceeds of such annual special voted tax, which tax shall be pledged to pay said loan and the interest thereon.

e. This law shall be construed as supplemental and in addition to existing statutory authority and as providing an independent method of financing the cost of acquiring school facilities for which a tax has been voted under this section and for the borrowing of money and execution of loan agreements in connection therewith and shall not be construed as subject to the provisions of any other law.

The fact that a merged area may have previously borrowed money and entered into loan agreements under authority herein contained shall not prevent such merged area from borrowing additional money and entering into further loan agreements provided that the aggregate of the amount payable under all of such loan agreements does not exceed the proceeds of the voted tax. All acts and proceedings heretofore taken by the board of directors or by any official of any merged area for the exercise of any of the powers granted by this section are hereby legalized and validated in all respects.

2. The proceeds of the tax voted under subsection 1, paragraph "a", prior to July 1, 1987 shall be used for the purposes for which it was approved by the voters and may be used for the purpose of paying the costs of utilities.

3. In addition to the tax authorized under section 280A.17, the board of directors of an area school may certify for levy by March 15, 1982 and March 15, 1983, a tax on taxable property in the merged area at rates that will provide total revenues for the two years equal to five percent of the area school's general fund expenditures for the fiscal year ending June 30, 1980 in order to provide a cash reserve for that area school. As nearly as possible, one-half the revenue for the cash reserve fund shall be collected during each year.

The revenues derived from the levies shall be placed in a separate cash reserve fund. Moneys from the cash reserve fund shall only be used to alleviate temporary cash shortages. If moneys from the cash reserve fund are used to alleviate a temporary cash shortage, the cash reserve fund shall be reimbursed immediately from the general fund of the area school as funds in the general fund become available, but in no case later than June 30 of the current fiscal year, to repay the funds taken from the cash reserve fund.

87 Acts, ch 233, §476, 477 SF 511

Subsection 1, paragraph a amended

NEW subsection 2 and existing subsection 2 renumbered as 3

280A.23 Authority of area directors.

The board of directors of each area vocational school or area community college shall:

1. Determine the curriculum to be offered in such school or college subject to approval of the state board. If an existing private educational or vocational institution within the merged area has facilities and curriculum of adequate size and quality which would duplicate the functions of the area school, the board of directors shall discuss with the institution the possibility of entering into contracts to have the existing institution offer facilities and curriculum to students of the merged area. The board of directors shall consider any proposals submitted by the private institution for providing such facilities and curriculum. The board of directors may enter into such contracts. In approving curriculum, the state board shall ascertain that all courses and programs submitted for approval are needed and that the curriculum being offered by an area school does not duplicate programs provided by existing public or private facilities in the area. In determining whether duplication would actually exist, the state board shall consider the needs of the area and consider whether the proposed programs are competitive as to size, quality, tuition, purposes, and area coverage with existing public and private educational or vocational institutions within the merged area.

2. Have authority to determine tuition rates for instruction. Tuition for residents of Iowa shall not exceed the lowest tuition rate per semester, or the equivalent, charged by an institution of higher education under the state board of regents for a full-time resident student. However, if a local school district pays tuition for a resident pupil of high school age, the limitation on tuition for residents of Iowa shall not apply, the amount of tuition shall be determined by the board of directors of the area school with the consent of the local school board, and the pupil shall not be included in the full-time equivalent enrollment of the area school for the purpose of computing general aid to the area school. Tuition for

nonresidents of Iowa shall be not less than one hundred fifty percent and not more than two hundred percent of the tuition established for residents of Iowa. Tuition for resident or nonresident students may be set at a higher figure with the approval of the state board. A lower tuition for nonresidents may be permitted under a reciprocal tuition agreement between a merged area and an educational institution in another state, if the agreement is approved by the state board. The board may designate that portion of the tuition moneys collected from students be used for student aid purposes.

3. Have the powers and duties with respect to such schools and colleges, not otherwise provided in this chapter, which are prescribed for boards of directors of local school districts by chapter 279 except that the board of directors is not required to prohibit the use of tobacco and the use or possession of alcoholic liquor or beer by any student under the provisions of section 279.9.

4. Have the power to enter into contracts and take other necessary action to insure a sufficient curriculum and efficient operation and management of the school or college and maintain and protect the physical plant, equipment, and other property of the school or college.

5. Establish policy and make rules, not inconsistent with law and administrative rules, regulations, and policies of the state board, for its own government and that of the administrative, teaching, and other personnel, and the students of the school or college, and aid in the enforcement of such laws, rules, and regulations.

6. Have authority to sell a student-constructed building and the property on which the student-constructed building is located or any article resulting from any vocational program or course offered at an area vocational school or area community college by any procedure which may be adopted by the board. Governmental agencies and governmental subdivisions of the state within the merged areas shall be given preference in the purchase of such articles. All revenue received from the sale of any article shall be credited to the funds of the board of the merged area.

7. With the consent of the inventor, and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors, and officials of any vocational school or community college of the merged area, or take assignment of such letters patent or copyright and make all necessary expenditures in regard thereto. Letters patent or copyright on inventions when so secured shall be the property of the board of the merged area and the royalties and earnings thereon shall be credited to the funds of the board.

8. Set the salary of the area superintendent. In setting the salary, the board shall consider the salaries of administrators of educational institutions in the merged area and the enrollment of the area school.

9. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its employees from any company the employee chooses that is authorized to do business in this state and through an Iowa-licensed insurance agent that the employee selects, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code of 1954, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. If an existing tax-sheltered annuity contract is to be replaced by a new contract the agent or representative of the company shall submit a letter of intent by registered mail to the company being replaced, to the insurance commissioner of the state of Iowa, and to the agent's or representative's own company at least thirty days prior to any action. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

10. Make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on the property of the area school. The rules may provide for the use of institutional roads, driveways, and grounds; registration of vehicles and bicycles; the designation of parking areas; the erection and maintenance of signs designating prohibitions or restrictions; the installation and maintenance of parking control devices except parking meters; and assessment, enforcement, and collection of reasonable penalties for the violation of the rules.

Rules made under this subsection may be enforced under procedures adopted by the board of directors. Penalties may be imposed upon students, faculty, and staff for violation of the rules, including, but not limited to, a reasonable monetary penalty which may be deducted from student deposits and faculty or staff salaries or other funds in possession of the area school or added to student tuition bills. The rules made under this subsection may also be enforced by the impoundment of vehicles and bicycles parked in violation of the rules, and a reasonable fee may be charged for the cost of impoundment and storage prior to the release of the vehicle or bicycle to the owner. Each area school shall establish procedures for the determination of controversies in connection with the imposition of penalties. The procedures shall require giving notice of the violation and the penalty prescribed and providing the opportunity for an administrative hearing.

11. Be authorized to issue to employees of merged area schools school credit cards to use for payment of authorized expenditures incurred in the performance of work-related duties.

12. During the second week of August of each year, publish by one insertion in at least one newspaper published in the merged area a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds of the area school for the preceding fiscal year. The statement of disbursements shall show the names of the persons, firms, or corporations, and the total amount paid to each during the fiscal year. The board is not required to make the publications and notices required under sections 279.34, 279.35, and 279.36.

13. Adopt policies and procedures for the use of telecommunications as an instructional tool at the area school. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

87 Acts, ch 207, §7 SF 333; 87 Acts, ch 233, §478 SF 511

Needs assessment relating to telecommunications as an instructional tool and report by July 1, 1989; grants for staff development programs to assist teachers and administrators in use of telecommunications as instructional tool; 87 Acts, ch 207, §4, 5 SF 333

Subsection 2 amended

NEW subsection 13

280A.25 Duties of director.

The director shall:

1. Designate a vocational school or community college as an "area vocational education school" within the meaning of, and for the purpose of administering, the Act of Congress designated the "Vocational Education Act of 1963". A vocational school or community college shall not be so designated by the director of the department of education for the expenditure of funds under 20 U.S.C. 35(a)(5), which has not been designated and classified as an area vocational school or area community college by the state board.

2. Change boundaries of director districts in a merged area when the board fails to change boundaries as required by law.

3. Make changes in boundaries of merged areas with the approval of the board of directors of each merged area affected by the change. When the boundaries of a merged area are changed, the director of the department of education may authorize the board of directors of the merged area to levy additional taxes upon

the property within the merged area, or any part of the merged area, and distribute the taxes so that all parts of the merged area are paying their share toward the support of the school or college.

4. Administer, allocate, and disburse federal or state funds made available to pay a portion of the cost of acquiring sites for and constructing, acquiring, or remodeling facilities for area vocational schools or area community colleges, and establish priorities for the use of such funds.

5. Administer, allocate, and disburse federal or state funds available to pay a portion of the operating costs of area vocational schools or area community colleges.

6. Approve or disapprove, in a manner as the director of the department of education may prescribe, sites and buildings to be acquired, erected, or remodeled for use by area vocational schools or area community colleges.

7. Propose administrative rules to carry out this chapter subject to approval of the state board.

8. Enter into contracts with local school boards within the area that have and maintain a technical or vocational high school and with private schools or colleges in the co-operative or merged areas to provide courses or programs of study in addition to or as a part of the curriculum made available in the community college or area vocational schools.

9. Make arrangements with boards of merged areas and local school districts to permit students attending high school to participate in vocational-technical programs and advanced college placement courses and obtain credit for such participation for application toward the completion of a high school diploma. The granting of credit is subject to the approval of the director of the department of education.

10. Prescribe a uniform system of accounting for area schools.

11. Adopt rules prohibiting an area school that does not provide intercollegiate athletics as a part of its program on July 1, 1987 from adding intercollegiate athletics to its program after that date.

12. Ensure that area schools that provide intercollegiate athletics as a part of their program comply with section 601A.9.

87 Acts, ch 115, §41 SF 374; 87 Acts, ch 224, §57, 58 HF 499

NEW unnumbered paragraph 1

NEW subsection 11

NEW subsection 12

280A.28 Tax for equipment replacement.

Annually, the board of directors may certify for levy a tax on taxable property in the merged area at a rate not exceeding three cents per thousand dollars of assessed valuation for equipment replacement for the area school.

87 Acts, ch 187, §1 HF 589

83 Acts, ch 180, §2, which repealed this section effective July 1, 1988, was itself repealed in 87 Acts, ch 187, §1 HF 589

280A.42 Payment of expenses.

The board of directors of a merged area shall audit and allow all just claims against the area school and an order shall not be drawn upon the treasury until the claim has been audited and allowed. However, the board of directors, by resolution, may authorize the secretary of the board, when the board is not in session, to issue payments for salaries pursuant to the terms of a written contract and to issue payments upon the receipt of verification filed with the secretary for all other general fund and plant fund expenses within limits established by resolution of the board; expenses involving auxiliary, agency, and scholarship and loan accounts; and refunds to students for tuition and fees. The secretary shall either deliver in person or mail the payments to the payees. A payment shall be made payable only to the person performing the service or furnishing the supplies for which the payment is issued. Payments issued prior to audit and allowance by

the board shall be allowed by the board at the first meeting held after the issuance and shall be entered in the minutes of the meeting.

87 Acts, ch 233, §479 SF 511
Section amended

CHAPTER 281

EDUCATION OF CHILDREN REQUIRING SPECIAL EDUCATION

281.12 Children placed by district court. Repealed by 87 Acts, ch 233, §486. SF 511 See §282.28-282.32.

CHAPTER 282

SCHOOL ATTENDANCE AND TUITION

282.7 Attending in another corporation—payment.

1. The board of directors of a school district by record action may discontinue any or all of grades seven through twelve and negotiate an agreement for attendance of the pupils enrolled in those grades in the schools of one or more contiguous school districts having accredited school systems. If the board designates more than one contiguous district for attendance of its pupils, the board shall draw boundary lines within the school district for determining the school districts of attendance of the pupils. The portion of a district so designated shall be contiguous to the accredited school district designated for attendance. Only entire grades may be discontinued under this subsection and if a grade is discontinued, all higher grades in that district shall also be discontinued. A school district that has discontinued one or more grades under this subsection has complied with the requirements of section 275.1 relating to the maintenance of kindergarten and twelve grades. A pupil who graduates from another school district under this subsection shall receive a diploma from the receiving district. The boards of directors entering into an agreement under this section shall provide for sharing the costs and expenses as provided in sections 282.10 through 282.12. The agreement shall provide for transportation and authority and liability of the affected boards.

2. A school district which does not have an area vocational technical high school or program, established and approved under chapter 258, may permit a resident child to attend school in another district which has such a school or program. The child shall meet the entrance requirements of the school district which has the area school or program. Tuition at the maximum rate prescribed in section 282.24, subsection 1, but not transportation, for such a child shall be paid by the resident district as required in section 282.20.

87 Acts, ch 224, §59 HF 499

1987 amendment not applicable to sharing agreements signed before July 1, 1987; 87 Acts, ch 224, §79 HF 499

Subsection 1 amended

282.8 Attending school outside state.

The boards of directors of school districts located near the state boundaries may designate schools of equivalent standing across the state line for attendance of both elementary and high school pupils when the public school in the adjoining state is nearer than any appropriate public school in a pupil's district of residence or in Iowa. Distance shall be measured by the nearest traveled public road. Arrangements shall be subject to reciprocal agreements made between the chief state school officers of the respective states. Notwithstanding section 282.1, arrangements between districts pursuant to the reciprocal agreements made under this section shall establish tuition and transportation fees in an amount

acceptable to the affected boards, but the tuition and transportation fees shall not be less than the lower average cost per pupil for the previous school year of the two affected school districts. For the purpose of this section average cost per pupil for the previous school year is determined by dividing the district's operating expenditures for the previous school year by the number of children enrolled in the district on the third Friday of September of the previous school year. A person attending school in another state shall continue to be treated as a pupil of the district of residence in the apportionment of the current school fund and the payment of state aid.

87 Acts, ch 4, §1 SF 39
Section amended

282.9 Reserved.

282.10 Whole grade sharing.

1. Whole grade sharing is a procedure used by school districts whereby all or a substantial portion of the pupils in any grade in two or more school districts share an educational program for all or a substantial portion of a school day under a written agreement pursuant to section 256.13, 280.15, or 282.7, subsection 1. Whole grade sharing may either be one-way or two-way sharing.

2. One-way whole grade sharing occurs when a school district sends pupils to one or more other school districts for instruction and does not receive a substantial number of pupils from those districts in return.

3. Two-way whole grade sharing occurs when a school district sends pupils to one or more other school districts for instruction and receives a substantial number of pupils from those school districts in return.

4. A whole grade sharing agreement shall be signed by the boards of the districts involved in the agreement not later than February 1 of the school year preceding the school year for which the agreement is to take effect.

87 Acts, ch 224, §60 HF 499
Not applicable to sharing agreements signed before July 1, 1987; 87 Acts, ch 224, §79 HF 499
NEW section

282.11 Procedure.

Not less than thirty days prior to signing a whole grade sharing agreement whereby all or a substantial portion of the pupils in a grade in the district will attend school in another district, the board of directors of each school district that is a party to a proposed sharing agreement shall hold a public hearing at which the proposed agreement is described, and at which the parent or guardian of an affected pupil shall have an opportunity to comment on the proposed agreement. Within the thirty-day period prior to the signing of the agreement, the parent or guardian of an affected pupil may appeal the sending of that pupil to the school district specified in the agreement, to the state board of education. A parent or guardian may appeal on the basis that sending the pupil to school in the district specified in the agreement will not meet the educational program needs of the pupil, or the school in the school district to which the pupil will be sent is not appropriate because consideration was not given to geographical factors. An appeal shall specify a contiguous school district to which the parent or guardian wishes to send the affected pupil. If the parent or guardian appeals, the standard of review of the appeal is clear and convincing evidence that the parent or guardian's hardship outweighs the benefits and integrity of the sharing agreement. The state board may require the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, or may deny the appeal by the parent or guardian. If the state board requires the district of residence to pay tuition to the contiguous school district specified by the parent or guardian, the tuition shall be equal to the tuition established in the sharing agreement. The decision of the state board is binding on the boards of directors of

the school districts affected, except that the decision of the state board may be appealed by either party to the district court.

87 Acts, ch 224, §61 HF 499
NEW section

282.12 Funding.

1. An agreement for whole grade sharing shall establish a method for determination of costs, if any, associated with the sharing agreement.
2. For one-way sharing, the sending district shall pay no less than one-half of the district cost per pupil of the sending district.
3. For two-way sharing, the costs shall be determined by mutual agreement of the boards.
4. The number of pupils participating in a whole grade sharing agreement shall be determined on the third Friday of September and third Friday of February of each year.

87 Acts, ch 224, §62 HF 499
Not applicable to sharing agreements signed before July 1, 1987; 87 Acts, ch 224, §79 HF 499
NEW section

282.13 through 282.16 Reserved.

282.19 Child living in foster care facility.

A child who is living in a licensed child foster care facility as defined in section 237.1 in this state which is located in a school district other than the school district in which the child resided before receiving foster care may enroll in and attend an accredited school in the school district in which the child is living. The instructional costs for students who do not require special education shall be paid as provided in section 282.31, subsection 1, paragraph "b" or for students who require special education shall be paid as provided in section 282.31, subsections 2 or 3.

87 Acts, ch 233, §480 SF 511
Section amended

282.24 Tuition fees established.

1. There is established a maximum tuition fee that may be charged for elementary and high school students residing within another school district or corporation except students attending school in another district under section 282.7, subsection 1. That fee is the district cost per pupil of the receiving district as computed in section 442.9, subsection 1, paragraph "a".

A school corporation which owns facilities used as attendance centers for students shall maintain an itemized statement of the appraised value of all buildings owned by the school corporation. Beginning July 1, 1976, the appraisal shall be updated at least one time every five years.

The director of the department of education shall, after July 1 but before September 1 of each year, notify every school in the state, affected by this section, what the computed maximum tuition rate shall be for the ensuing year.

This subsection does not prevent the corporation or district in which the student resides from paying a tuition in excess of the maximum computed tuition rates, if the actual per pupil cost of the preceding year so warrants, but the receiving district or corporation shall not demand more than the maximum rate.

2. For the purpose of this section, high school means a school which commences with either grade nine or grade ten as determined by the board of directors of the district, and junior high school means the remaining grades commencing with grade seven.

87 Acts, ch 224, §63 HF 499
Subsection 2 amended

282.27 Payment for certain children. Repealed by 87 Acts, ch 233, §486. SF 511 See §282.28-282.32.

282.28 Children at Eldora and Toledo.

Annually, the area education agency in which the state training school and the Iowa juvenile home are located and the department of human services on behalf of the training school and juvenile home shall submit an annual joint application by January 1 for the next succeeding school year to the department of education describing the proposed special education instructional and support programs and service improvements for the training school and juvenile home. The department of education shall review and approve or modify the program and proposed budget by February 1 and shall notify the area education agency and the department of human services of the approved budget. The moneys for the approved budget shall supplement and not supplant moneys equal to the moneys expended for education for the fiscal year beginning July 1, 1986 by the department of human services. The moneys for the approved budget shall be used to ensure that the training school and juvenile home comply with appropriate administrative rules relating to special education adopted by the department of education.

The area education agency shall submit a claim to the department of education by August 1 following the school year for the actual costs of the special education programs and services provided at the training school and juvenile home. The department shall review and approve or modify the claims by September 1 and shall notify the department of revenue and finance of the approved claim amount. The total amount of the approved claim shall be paid by the department of revenue and finance to the area education agency by October 1. The total amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 442.26 during the remainder of that fiscal year to all school districts in the state. The portion of the total amount of the approved claim that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year. The department of revenue and finance shall transfer the total amount of the approved claim from the moneys appropriated under section 442.26 for payment to the area education agency.

87 Acts, ch 233, §481 SF 511
NEW section

282.29 Children placed by district court.

Notwithstanding section 282.31, subsection 1, a child who has been identified as requiring special education, who has been placed in a facility or home by the district court, and for whom parental rights have been terminated by the district court, shall be provided special education programs and services on the same basis as the programs and services are provided for children requiring special education who are residents of the school district in which the child has been placed. The special education instructional costs shall be paid as provided in section 282.31, subsection 2 or 3.

87 Acts, ch 233, §482 SF 511
NEW section

282.30 Special programs.

1. *a* An area education agency shall provide or make provision for an appropriate educational program for each child living in the following types of facilities located within its boundaries:

(1) An approved or licensed shelter care home, as defined in section 232.2, subsection 31.

(2) An approved juvenile detention home, as defined in section 232.2, subsection 28.

b. The area education agency shall provide the educational program by any one of, but not limited to, the following:

(1) Providing for the enrollment of the child in the district of residence of the child, subject to the approval of the district in which the child is living.

(2) Cooperating with the district of residence of the child and obtaining the course of study and textbooks of the child for use in the special facility into which the child has been placed.

(3) Providing for the enrollment of the child in the district in which the child is living, subject to the approval of the district in which the child is living.

An area education agency shall not provide educational services to a facility specified in paragraph "a" unless the facility makes a request for educational services to the area education agency by December 1 of the school year prior to the beginning of the school year for which the services are being requested.

2. The area education agency where the child is living, the school district of residence, the other appropriate area education agency or agencies, and other appropriate agencies involved with the care or placement of the child shall cooperate with the school district where the child is living in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in such facility specified in subsection 1.

87 Acts, ch 233, §483 SF 511
NEW section

282.31 Funding for special programs.

1. a. A child who lives in a facility pursuant to section 282.30, subsection 1, paragraph "a", and who is not enrolled in the educational program of the district of residence of the child, shall receive appropriate educational services. The area education agency shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the area education agency by February 1. The area education agency shall submit a claim to the department of education by August 1 following the school year for the actual cost of the program. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines pursuant to section 256.7, subsection 12, and shall notify the department of revenue and finance of the approved claim amount by September 1. The total amount of the approved claim shall be paid by the department of revenue and finance to the area education agency by October 1. The total amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 442.26 during the remainder of that fiscal year to all school districts in the state. The portion of the total amount of the approved claims that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year. The department of revenue and finance shall transfer the total amount of the approved claims from the moneys appropriated under section 442.26 for payment to the area education agencies.

b. A child who lives in a facility or home pursuant to section 282.19, and who does not require special education and who is not enrolled in the educational program of the district of residence of the child, shall be included in the basic enrollment of the school district in which the facility or home is located.

2. a. The actual special education instructional costs incurred for a child who lives in a facility pursuant to section 282.19 or for a child who is placed in a

facility or home pursuant to section 282.29, who requires special education and who is not enrolled in the educational program of the district of residence of the child but who receives an educational program from the district in which the facility or home is located, shall be paid by the district of residence of the child to the district in which the facility or home is located, and the costs shall include the cost of transportation.

b. A child shall not be denied special education programs and services because of a dispute over the determination of district of residence of the child. The director of the department of education shall determine the district of residence when a dispute arises regarding the determination of the district of residence for a child who requires special education pursuant to this subsection.

3. The actual special education instructional costs, including transportation, for a child who requires special education shall be paid by the department of revenue and finance to the school district in which the facility or home is located, only when a district of residence cannot be determined, and the child was not included in the weighted enrollment of any district pursuant to section 281.9, and the payment pursuant to subsection 2, paragraph "a" was not made by any district. The district shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the district by February 1. The district shall submit a claim by August 1 following the school year for the actual cost of the program. The department shall review and approve or modify the claim and shall notify the department of revenue and finance of the approved claim amount by September 1. The total amount of the approved claim shall be paid by the department of revenue and finance to the school district by October 1. The total amount paid by the department of revenue and finance shall be deducted monthly from the state foundation aid paid under section 442.26 during the remainder of that fiscal year to all school districts in the state. The portion of the total amount of the approved claims that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for the budget year. The department of revenue and finance shall transfer the total amount of the approved claims from moneys appropriated under section 442.26 for payment to the school district.

4. For purposes of this section, "*district of residence*" means the school district in which the parent or legal guardian of the child resides or the district in which the district court is located if the district court is the guardian of the child.

5. Programs may be provided during the summer and funded under this section if the school district or area education agency determines a valid educational reason to do so.

87 Acts, ch 233, §484 SF 511
NEW section

282.32 Appeal.

An area education agency or local school district may appeal a decision made pursuant to section 282.28 or 282.31 to the state board of education. The decision of the state board is final.

87 Acts, ch 233, §485 SF 511
NEW section

CHAPTER 285

STATE AID FOR TRANSPORTATION

285.1 When entitled to state aid.

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

To the extent that this section as amended requires transportation which was not required before August 15, 1973, the board of directors shall not be required to provide such transportation before July 1, 1978.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In a district where transportation by school bus is impracticable or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. Except as provided in section 285.3, the parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of education.

However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than three family members who attend elementary school and one family member who attends high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parents or guardians of public and nonpublic school pupils to furnish transportation for their children up to two miles to connect with vehicles of transportation. The parents or guardians shall be reimbursed for such transportation by the boards of the resident districts at the rate of twenty-eight cents per mile per day, one way, per family for the distance from the pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the director of the department of education and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions,

by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and other items as determined and approved by the director of the department of education but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of a school bus used in transporting pupils to and from extra-curricular activities shall be included in determining the pro rata cost. In a district where, because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the director of the department of education.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "school designated for attendance" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. a. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such

transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation.

b. As an alternative to paragraph "a" of this subsection, subject to section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil resides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

c. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence and the district of residence meets the requirements of subsections 14 to 16 of this section by using subsection 17, paragraph "c", of this section and the district in which the nonpublic school is located is contiguous to the district of the pupil's residence and is willing to provide transportation under subsection 17, paragraph "a" or "b", of this section, the district in which the nonpublic school is located may provide transportation services, subject to section 285.9, subsection 3, and may make the claim for reimbursement under section 285.2. The district in which the nonpublic school is located shall notify the district of the pupil's residence that it is making the claim for reimbursement, and the district of the pupil's residence shall be relieved of the requirement for providing transportation and shall not make a claim for reimbursement for those nonpublic school pupils for which a claim is filed by the district in which the nonpublic school is located.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

a. Transportation in a school bus operated by a public school district.

b. Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil transportation costs of the school district for that year.

c. Utilizing the transportation reimbursement provision of subsection 3.

d. Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil's residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The director of the department of education may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with rules adopted by the department of education in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children, handicapped and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

22. Notwithstanding subsection 1, paragraph "a", a parent or guardian of an elementary pupil entitled to transportation pursuant to subsection 1, may request that a child day care facility be designated for purposes of subsection 9 rather than

the residence of the pupil. The request shall be submitted for a period of time of at least one semester and may not be submitted more than twice during a school year.

87 Acts, ch 6, §1 SF 41; 87 Acts, ch 115, §42 SF 374; 87 Acts, ch 233, §488 SF 511
 Amendment to subsection 3 effective March 2, 1987; applicable to reimbursements for nonpublic school transportation provided on or after July 1, 1986; exception for 1986-1987 school year; 87 Acts, ch 6, §3-5 SF 41
 Subsection 3, unnumbered paragraph 2 amended
 Subsection 12 amended
 NEW subsection 22

285.3 Parental reimbursement for nonpublic school pupil transportation.

The portion of the amount appropriated under section 285.2 to pay claims to reimburse parents or guardians of nonpublic school pupils for furnishing transportation for their children is equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost as determined by the department of education multiplied by the total number of nonpublic school pupils for which the parent or guardian furnishes transportation, except that all elementary pupils and two members of a family who attend a nonpublic high school shall be included in the total number.

The amount of an approved claim to a parent or guardian for furnishing transportation shall include a base payment, and may include a supplemental payment, determined under this section. The base payment is equal to the amount of the reimbursement determined under section 285.1, subsection 3.

The difference between the amount appropriated under this section for reimbursement of parents and guardians of nonpublic school pupils and the amount paid to parents and guardians of nonpublic school pupils pursuant to section 285.1, subsection 3, shall be used for supplemental payments to the parents and guardians of nonpublic school pupils who transport one or more family members more than four miles to a school of attendance. The department of education shall add together the number of parents and guardians who transport one or more family members more than four miles to their nonpublic schools of attendance and divide that number into the amount available for supplemental payments to determine a supplemental payment amount per parent or guardian. That supplemental payment amount per parent or guardian shall be paid to each eligible parent or guardian transporting nonpublic school pupils in addition to the base payment.

The supplemental payment amount calculated under this section for nonpublic school parents shall be paid by the school district of residence to parents and guardians transporting eligible resident pupils attending public school.

87 Acts, ch 6, §2 SF 41
 Effective March 2, 1987; applicable to reimbursements for nonpublic school transportation provided on or after July 1, 1986; exception for 1986-1987 school year; 87 Acts, ch 6, §3-5 SF 41
 NEW section

285.16 Nonpublic school defined.

As used in this chapter, "nonpublic school" means those nonpublic schools accredited by the department of education as provided in section 256.11 and nonpublic institutions which comply with state board of education standards for providing special education programs.

87 Acts, ch 115, §43 SF 374
 Section amended

CHAPTER 286A

STATE FUNDING FOR AREA SCHOOLS

286A.8 Library function cost.

The library function cost for a budget year for an area school is determined by the department of education by multiplying the total of the area school's support

for the five instructional cost centers, for the general institutional support function, for the student services function, and for the physical plant function for that year by three and thirty-three hundredths percent, which is the average percent of the area schools' support expended for the library function cost. The department shall notify the department of management.

The foundation support level for the library services function for an area school for a base year is sixty-five percent of the area school's library function cost for that year.

87 Acts, ch 233, §489 SF 511
Section amended

CHAPTER 290

APPEAL FROM DECISIONS OF BOARDS OF DIRECTORS

290.1 Appeal to state board.

A person aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, or a decision or order of a board of directors under section 280.16 may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner.

87 Acts, ch 224, §64 HF 499
Section amended

CHAPTER 291

PRESIDENT, SECRETARY, AND TREASURER OF BOARD

291.15 Annual report.

The treasurer shall make an annual report to the board at a regular or special meeting held not later than August 15, which shall show the amount of the general fund and the schoolhouse fund held over, received, paid out, and on hand, the several funds to be separately stated.

87 Acts, ch 5, §1 SF 50; 87 Acts, ch 115, §44 SF 374
See Code editor's note to §135.11
Section amended

CHAPTER 294A

EDUCATIONAL EXCELLENCE PROGRAM—TEACHERS

DIVISION I EDUCATIONAL EXCELLENCE PROGRAM

294A.1 Educational excellence program.

The purpose of this chapter is to promote excellence in education. In order to maintain and advance the educational excellence in the state of Iowa, this chapter establishes the Iowa educational excellence program. The program shall consist of three major phases addressing the following:

1. Phase I—The recruitment of quality teachers.
2. Phase II—The retention of quality teachers.

3. Phase III--The enhancement of the quality and effectiveness of teachers through the utilization of performance pay.

87 Acts, ch 224, §1 HF 499
NEW section

294A.2 Definitions.

For the purposes of this chapter:

1. "*Certified enrollment in a school district*" for the school years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that district's basic enrollment for the budget year beginning July 1, 1987 as defined in section 442.4. For each school year thereafter, certified enrollment in a school district means that district's basic enrollment for the budget year.

2. "*Enrollment served*" for the fiscal years beginning July 1, 1987, July 1, 1988, and July 1, 1989, means that area education agency's enrollment served for the budget year beginning July 1, 1987. For each school year thereafter, enrollment served means that area education agency's enrollment served for the budget year. Enrollment served shall be determined under section 442.27, subsection 12.

3. "*General training requirements*" means requirements prescribed by a board of directors that provide for the acquisition of additional semester hours of graduate credit from an institution of higher education approved by the board of educational examiners or the completion of staff development activities approved by the department of education for renewal of certificates issued under chapter 260.

4. "*Specialized training requirements*" means requirements prescribed by a board of directors to meet specific needs of the school district identified by the board of directors that provide for the acquisition of clearly defined skills through formal or informal education that are beyond the requirements necessary for initial certification under chapter 260.

5. "*Teacher*" means an individual holding a teaching certificate issued under chapter 260, letter of authorization, or a statement of professional recognition issued by the board of educational examiners who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

6. "*Teacher's regular compensation*" means the annual salary specified in a teacher's contract pursuant to the salary schedule adopted by the board of directors or negotiated under chapter 20. It does not include pay earned by a teacher for performance of additional noninstructional duties and does not include the costs of the employer's share of fringe benefits.

87 Acts, ch 224, §2 HF 499
NEW section

294A.3 Educational excellence fund.

An educational excellence fund is established in the office of treasurer of state to be administered by the department of education. Moneys appropriated by the general assembly for deposit in the fund shall be paid to school districts and area education agencies pursuant to the requirements of this chapter and shall be expended only to pay for increases in the regular compensation of teachers and other salary increases for teachers, to pay the costs of the employer's share of federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the salary increases, and to pay costs associated with providing specialized or general training. Moneys received by school districts and area education agencies shall not be used for pay earned by a teacher for performance of additional noninstructional duties.

If moneys are appropriated by the general assembly to the fund for distribution under this chapter the moneys shall be allocated by the department so that the allocations of moneys for phases I and II are made prior to the allocation of moneys for phase III.

87 Acts, ch 224, §3 HF 499
NEW section

DIVISION II
PHASE I

294A.4 Goal.

The goal of phase I is to provide for establishment of pay plans incorporating sufficient annual compensation to attract quality teachers to Iowa's public school system. This is accomplished by increasing the minimum salary. A beginning salary which is competitive with salaries paid to other professionals will provide incentive for top quality individuals to enter the teaching profession.

87 Acts, ch 224, §4 HF 499
NEW section

294A.5 Minimum salary supplement.

For the school year beginning July 1, 1987 and succeeding school years, the minimum annual salary paid to a full-time teacher as regular compensation shall be eighteen thousand dollars.

For the school year beginning July 1, 1987 for phase I, each school district and area education agency shall certify to the department of education by the third Friday in September the names of all teachers employed by the district or area education agency whose regular compensation is less than eighteen thousand dollars per year for that year and the amounts needed as minimum salary supplements. The minimum salary supplement for each eligible teacher is the total of the difference between eighteen thousand dollars and the teacher's regular compensation plus the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the additional salary moneys.

The board of directors shall report the salaries of teachers employed on less than a full-time equivalent basis, and the amount of minimum salary supplement shall be prorated.

87 Acts, ch 224, §5 HF 499
NEW section

294A.6 Payments.

For the school year beginning July 1, 1987, the department of education shall notify the department of revenue and finance of the total minimum salary supplement to be paid to each school district and area education agency under phase I and the department of revenue and finance shall make the payments. For school years after the school year beginning July 1, 1987, if a school district or area education agency reduces the number of its full-time equivalent teachers below the number employed during the school year beginning July 1, 1987, the department of revenue and finance shall reduce the total minimum salary supplement payable to that school district or area education agency so that the amount paid is equal to the ratio of the number of full-time equivalent teachers employed in the school district or area education agency for that school year divided by the number of full-time equivalent teachers employed in the school district or area education agency for the school year beginning July 1, 1987 and

multiplying that fraction by the total minimum salary supplement paid to that school district or area education agency for the school year beginning July 1, 1987.

87 Acts, ch 224, §6 HF 499
NEW section

294A.7 Reserved.

DIVISION III PHASE II

294A.8 Goal.

The goal of phase II is to keep Iowa's best educators in the profession and assist in their development by providing general salary increases.

87 Acts, ch 224, §7 HF 499
NEW section

294A.9 Phase II program.

Phase II is established to improve the salaries of teachers. For each fiscal year, the department of education shall allocate to each school district for the purpose of implementing phase II an amount equal to seventy-five dollars and ninety-three cents multiplied by the district's certified enrollment and to each area education agency for the purpose of implementing phase II an amount equal to three dollars and fifty-five cents multiplied by the enrollment served in the area education agency, if the general assembly has appropriated sufficient moneys to the fund so that pursuant to section 294A.3, thirty-eight million five hundred thousand dollars will be allocated by the department to school districts and area education agencies for phase II. If, because of the amount of the appropriation made by the general assembly to the fund, less than thirty-eight million five hundred thousand dollars is allocated for phase II, the department of education shall adjust the amount for each student in certified enrollment and each student in enrollment served based upon the amount allocated for phase II.

The department of education shall certify the amounts of the allocations for each school district and area education agency to the department of revenue and finance and the department of revenue and finance shall make the payments to school districts and area education agencies.

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence shall transmit the phase II moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students.

If a school district uses teachers under a contract between the district and the area education agency in which the district is located, the school district shall transmit to the employing area education agency a portion of its phase II allocation based upon the portion that the salaries of teachers employed by the area education agency and assigned to the school district for a school year bears to the total teacher salaries paid in the district for that school year, including the salaries of the teachers employed by the area education agency.

If the school district or area education agency is organized under chapter 20 for collective bargaining purposes, the board of directors and certified bargaining representative for the certificated employees shall mutually agree upon a formula for distributing the phase II allocation among the teachers. For the school year beginning July 1, 1987 only, the parties shall follow the procedures specified in chapter 20 except that if the parties reach an impasse, neither impasse procedures agreed to by the parties nor sections 20.20 through 20.22 shall apply and the phase II allocation shall be divided as provided in section 294A.10. Negotiations under this section are subject to the scope of negotiations specified in section 20.9.

If a board of directors and certified bargaining representative for certificated employees have not reached mutual agreement by July 15, 1987 for the distribution of the phase II payment, section 294A.10 will apply.

If the school district or area education agency is not organized for collective bargaining purposes, the board of directors shall determine the method of distribution.

87 Acts, ch 224, §8 HF 499
NEW section

294A.10 Failure to agree on distribution.

For the school year beginning July 1, 1987 only, if the board of directors and certified bargaining representative for the certificated employees have not reached agreement under section 294A.9, the board of directors shall divide the payment among the teachers employed by the district or area education agency as follows:

1. All full-time teachers whose regular compensation is equal to or more than the minimum salary for phase I will receive an equal amount from the phase II allocation.

2. A teacher who will receive a minimum salary supplement under section 294A.5 will receive moneys equal to the difference between the amount from the phase II allocation and the minimum salary supplement paid to that teacher.

3. The amount from the phase II allocation will be prorated for a teacher employed on less than a full-time basis.

4. An amount from the phase II allocation includes the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the additional salary.

87 Acts, ch 224, §9 HF 499
NEW section

294A.11 Reports.

By August 15, 1987, each school district and area education agency shall file a report with the department of education, on forms provided by the department of education, specifying the method used to distribute the phase II allocation.

Reports filed by area education agencies shall include a description of the method used to distribute phase II allocations to teachers employed by the area education agency working under contract in a school district.

87 Acts, ch 224, §10 HF 499
NEW section

DIVISION IV PHASE III

294A.12 Goal.

The goal of phase III is to enhance the quality, effectiveness, and performance of Iowa's teachers by promoting teacher excellence. This will be accomplished through the development of performance-based pay plans and supplemental pay plans requiring additional instructional work assignments which may include specialized training or differential training, or both.

It is the intent of the general assembly that school districts and area education agencies incorporate into their planning for performance-based pay plans and supplemental pay plans, implementation of recommendations from recently issued national and state reports relating to the requirements of the educational system for meeting future educational needs, especially as they relate to the preparation, working conditions, and responsibilities of teachers, including but not limited to assistance to new teachers, development of teachers as instructional

leaders in their schools and school districts, using teachers for evaluation and diagnosis of other teachers' techniques, and the implementation of sabbatical leaves.

87 Acts, ch 224, §11 HF 499
NEW section

294A.13 Phase III program.

For the school year beginning July 1, 1987 and succeeding school years, each school district and area education agency that meets the requirements of this section is eligible to receive moneys for the implementation under phase III of a performance-based pay plan or supplemental pay plan, or a combination of the two.

87 Acts, ch 224, §12 HF 499
NEW section

294A.14 Phase III payments.

For each fiscal year, the department shall allocate the remainder of the moneys appropriated by the general assembly to the fund for phase III, subject to section 294A.18. If fifty million dollars is allocated for phase III, the payments for an approved plan for a school district shall be equal to the product of a district's certified enrollment and ninety-eight dollars and sixty-three cents, and for an area education agency shall be equal to the product of an area education agency's enrollment served and four dollars and sixty cents. If the moneys allocated for phase III are either greater than or less than fifty million dollars, the department of education shall adjust the amount for each student in certified enrollment and each student in enrollment served based upon the amount allocated for phase III.

If a school district has discontinued grades under section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence shall transmit the phase III moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students.

A plan shall be developed using the procedure specified under section 294A.15. The plan shall provide for the establishment of a performance-based pay plan, a supplemental pay plan, or a combination of the two pay plans and shall include a budget for the cost of implementing the plan. In addition to the costs of providing additional salary for teachers and the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the additional salary, the budget may include costs associated with providing specialized or general training. Moneys received under phase III shall not be used to employ additional employees of a school district, except that phase III moneys may be used to employ substitute teachers, part-time teachers, and other employees needed to implement plans that provide innovative staffing patterns or that require that a teacher employed on a full-time basis be absent from the classroom for specified periods for fulfilling other instructional duties. However, all teachers employed are eligible to receive additional salary under an approved plan.

For the purpose of this section, a performance-based pay plan shall provide for salary increases for teachers who demonstrate superior performance in completing assigned duties. The plan shall include the method used to determine superior performance of a teacher. For school districts, the plan may include assessments of specific teaching behavior, assessments of student performance, assessments of other characteristics associated with effective teaching, or a combination of these criteria.

For school districts, a performance-based pay plan may provide for additional salary for individual teachers or for additional salary for all teachers assigned to

an attendance center. For area education agencies, a performance-based pay plan may provide for additional salary for individual teachers or for additional salary for all teachers assigned to a specific discipline within an area education agency. If the plan provides additional salary for all teachers assigned to an attendance center, or specific discipline, the receipt of additional salary by those teachers shall be determined on the basis of whether that attendance center or specific discipline, meets specific objectives adopted for that attendance center, or specific discipline. For school districts, the objectives may include, but are not limited to, decreasing the dropout rate, increasing the attendance rate, or accelerating the achievement growth of students enrolled in that attendance center.

If a performance-based pay plan provides additional salary for individual teachers:

1. The plan may provide for salary moneys in addition to the existing salary schedule of the school district or area education agency and may require the participation by the teacher in specialized training requirements.
2. The plan may provide for salary moneys by replacing the existing salary schedule or as an option to the existing salary schedule and may include specialized training requirements, general training requirements, and experience requirements.

A supplemental pay plan may provide for supplementing the costs of vocational agriculture programs as provided in section 294A.17.

For the purpose of this section, a supplemental pay plan in a school district shall provide for the payment of additional salary to teachers who participate in either additional instructional work assignments or specialized training during the regular school day or during an extended school day, school week, or school year. A supplemental pay plan in an area education agency shall provide for the payment of additional salary to teachers who participate in either additional work assignments or improvement of instruction activities with school districts during the regular school day or during an extended school day, school week, or school year.

For school districts, additional instructional work assignments may include but are not limited to general curriculum planning and development, vertical articulation of curriculum, horizontal curriculum coordination, development of educational measurement practices for the school district, development of plans for assisting beginning teachers during their first year of teaching, attendance at summer staff development programs, development of staff development programs for other teachers to be presented during the school year, and other plans locally determined in the manner specified in section 294A.15 and approved by the department of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the school district.

For area education agencies, additional instructional work assignments may include but are not limited to providing assistance and support to school districts in general curriculum planning and development, providing assistance to school districts in vertical articulation of curriculum and horizontal curriculum coordination, development of educational measurement practices for school districts in the area education agency, development of plans for assisting beginning teachers during their first year of teaching, attendance or instruction at summer staff development programs, development of staff development programs for school district teachers to be presented during the school year, and other plans determined in the manner specified in section 294A.15 and approved by the depart-

ment of education under section 294A.16 that are of equal importance or more appropriately meet the educational needs of the area education agency.

87 Acts, ch 224, §13 HF 499
NEW section

294A.15 Development of plan.

The board of directors of a school district desiring to receive moneys under phase III shall appoint a committee consisting of representatives of school administrators, teachers, parents, and other individuals interested in the public schools of the school district to develop a proposal for distribution of phase III moneys to be submitted to the board of directors. The board of directors of an area education agency desiring to receive moneys under phase III shall appoint a committee of similar membership to develop a proposal. If the school district or area education agency is organized under chapter 20 for collective bargaining purposes, the board shall provide that one of the teacher members of the committee is an individual selected by the certified bargaining representative for certificated employees of the district or area education agency. The proposal developed by the committee shall be submitted to the board of directors of the school district or area education agency for consideration by the board in developing a plan. For the school year beginning July 1, 1987, if the school district or area education agency is organized for collective bargaining purposes under chapter 20, the portions of the proposed plan that are within the scope of negotiations specified in section 20.9 require the mutual agreement by January 1, 1988 of both the board of directors of the school district or area education agency and the certified bargaining representative for the certificated employees. In succeeding years, if the school district or area education agency is organized for collective bargaining purposes, the portions of the proposed plan that are within the scope of the negotiations specified in section 20.9 are subject to chapter 20.

Nothing in this chapter shall be construed to expand or restrict the scope of negotiations in section 20.9.

87 Acts, ch 224, §14 HF 499
NEW section

294A.16 Submission of plan.

A plan adopted by the board of directors of a school district or area education agency shall be submitted to the department of education not later than July 1 of a school year for that school year. Amendments to multiple year plans may be submitted annually.

If a school district uses teachers under a contract between the district and the area education agency in which the district is located, the school district shall make provision for those teachers under phase III.

The department of education shall review each plan and its budget and notify the department of management of the names of school districts and area education agencies with approved plans.

However, for the school year beginning July 1, 1987, a board of directors may submit a proposed plan and budget not later than January 1, 1988, and the department of education shall notify the school districts and area education agencies not later than February 15, 1988 that their plans have been approved by the department. Final approval of budgets for approved phase III plans shall be determined by the department of education after the certification required in section 294A.18 but not later than February 15, 1988. The department of education shall notify the department of revenue and finance of the amounts of payments to be made to each school district and area education agency that has an approved plan. Moneys allocated to a school district or area education agency for the school year beginning July 1, 1987 for an approved phase III plan that are not expended for that school year shall not revert to the general fund of the state but may be expended by that school district or area education agency during the

school year beginning July 1, 1988. For school years thereafter, moneys allocated to a school district or area education agency for an approved phase III plan for a school year but not expended during that school year shall revert to the general fund of the state as provided in section 8.33.

87 Acts, ch 224, §15 HF 499
NEW section

294A.17 Vocational agriculture.

A supplemental pay plan that provides for supplementing the costs of vocational agriculture programs may provide for increasing teacher salary costs for twelve month contracts for vocational agriculture teachers.

87 Acts, ch 224, §16 HF 499
NEW section

294A.18 Determination of phase III allocation.

On February 1, 1988, the governor shall certify to the department of education the amount of money available for allocation under phase III. If pursuant to any provision of law, the governor certifies an amount lower than the allocation that would otherwise be made under this chapter, the department of education shall, if necessary, adjust the amount for each student in certified enrollment and each student in enrollment served which are included in approved plans pursuant to section 294A.14 and shall review the budgets of the approved plans.

87 Acts, ch 224, §17 HF 499
NEW section

294A.19 Report.

Each school district and area education agency receiving moneys for phase III during a school year shall file a report with the department of education by July 1 of the next following school year. The report shall describe the plan, its implementation, and the expenditures made under the plan including the salary increases paid to each eligible employee. The report may include any proposed amendments to the plan for the next following school year.

87 Acts, ch 224, §18 HF 499
NEW section

294A.20 Reversion of moneys.

Any portion of moneys appropriated to the educational excellence trust fund and allocated to phase III under section 294A.3 for a fiscal year not expended by school districts and area education agencies during that fiscal year revert to the general fund of the state as provided in section 8.33.

87 Acts, ch 224, §19 HF 499
Exception; see §294A.16
NEW section

DIVISION V GENERAL PROVISIONS

294A.21 Rules.

The state board of education shall adopt rules under chapter 17A for the administration of this chapter.

87 Acts, ch 224, §20 HF 499
NEW section

294A.22 Payments.

Payments for each phase of the educational excellence program shall be made by the department of revenue and finance on a quarterly basis, and the payments shall be separate from state aid payments made pursuant to sections 442.25 and 442.26. For the school year beginning July 1, 1987, the first quarterly payment shall be made not later than October 15, 1987 taking into consideration the relative budget and cash position of the state resources. The payments to a school

district or area education agency may be combined and a separate accounting of the amount paid for each program shall be included.

Any payments made to school districts or area education agencies under this chapter are miscellaneous income for purposes of chapter 442.

87 Acts, ch 224, §21 HF 499
NEW section

294A.23 Multiple salary payments.

The salary increases that may be granted to a teacher under phase III are in addition to any salary increases granted to a teacher under phase I or phase II.

87 Acts, ch 224, §22 HF 499
NEW section

294A.24 Collective bargaining.

For the school year beginning July 1, 1987 only, section 20.17, subsection 3, relating to the exemption from chapter 21 and presentation of initial bargaining positions of the public employer and certified bargaining representative for certificated employees, does not apply to collective bargaining for moneys received under phases II and III, and an agreement between the board of directors and the certified bargaining representative for certificated employees need not be ratified by the employees or board.

87 Acts, ch 224, §23 HF 499
NEW section

294A.25 Appropriation.

1. For each fiscal year commencing with the fiscal year beginning July 1, 1987, there is appropriated from the general fund of the state to the department of education the amount of ninety-two million one hundred thousand eighty-five dollars to be used to improve teacher salaries. The moneys shall be distributed as provided in this section.

2. The amount of one hundred fifteen thousand five hundred dollars to be paid to the department of human services for distribution to its certificated classroom teachers at institutions under the control of the department of human services for payments for phase II based upon the average student yearly enrollment at each institution as determined by the department of human services.

3. The amount of ninety-four thousand six hundred dollars to be paid to the state board of regents for distribution to certificated classroom teachers at the Iowa braille and sight-saving school and the Iowa school for the deaf for payments of minimum salary supplements for phase I and payments for phase II based upon the average yearly enrollment at each school as determined by the state board of regents.

4. For each fiscal year, the remainder of moneys appropriated in subsection 1 to the department of education shall be deposited in the educational excellence fund to be allocated in an amount to meet the minimum salary requirements of this chapter for phase I, in an amount of thirty-eight million five hundred thousand dollars for phase II, and the remainder of the appropriation for phase III.

87 Acts, ch 233, §491 SF 511
Item veto applied
NEW section

CHAPTER 301

TEXTBOOKS

301.29 "Nonpublic school" defined.

As used in this chapter, "nonpublic school" means those nonpublic schools accredited by the department of education as provided in section 256.11.

87 Acts, ch 115, §45 SF 374
Section amended

CHAPTER 302

SCHOOL FUNDS

302.1 Permanent fund.

The permanent school fund, the interest of which only can be appropriated for school purposes, shall consist of:

1. Five percent of the net proceeds of the public lands of the state.
2. The proceeds of the sale of the five hundred thousand acres of land granted the state under the eighth section of an Act of Congress passed September 4, 1841, entitled: "An Act to appropriate the proceeds of all sales of public lands, and to grant pre-emption rights".
3. The proceeds of all intestate estates escheated to the state.
4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof.
5. The portion of the interest on the permanent school fund that has not been transferred to the credit of the first in the nation in education foundation.

87 Acts, ch 115, §46 SF 374
Subsection 5, unnumbered paragraph 2 stricken

302.1A Transfer of interest.

The department of revenue and finance shall transfer the interest earned on the permanent school fund to the first in the nation in education foundation in the manner provided in this section. Prior to March 1 of each year, the governing board of the first in the nation in education foundation established in section 257A.2 shall certify to the director of revenue and finance the total amount of the endowment in the first in the nation in education fund. The portion of the permanent school fund that is equal to the total amount of the endowment is dedicated to the first in the nation in education foundation for that year. The interest from this dedicated amount shall be transferred to the credit of the first in the nation in education foundation. The remaining portion of the interest earned on the permanent school fund shall become a part of the permanent school fund.

Exception through March 1, 1988; 87 Acts, ch 233, §414
Section not amended; included for temporary exception in above footnote

CHAPTER 303

DEPARTMENT OF CULTURAL AFFAIRS

303.1 Department of cultural affairs.

1. The department of cultural affairs is created. The department is under the control of a director who shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The salary of the director shall be set by the governor within a range set by the general assembly.

2. The department has primary responsibility for development of the state's interest in the areas of the arts, history, libraries, and other cultural matters. In fulfilling this responsibility, the department will be advised and assisted by the state library commission, the state historical society and its board of trustees, the Iowa arts council, the Terrace Hill commission, and the Iowa public broadcasting board.

The department shall:

a. Develop a comprehensive, co-ordinated, and efficient policy to preserve, research, interpret, and promote to the public an awareness and understanding of local, state, and regional history.

b. Stimulate and encourage educational radio and television and other educational communications services as necessary to aid in accomplishing the educational objectives of the state.

c. Stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation in them.

d. Implement tourism-related art and history projects as directed by the general assembly.

e. Design a comprehensive, statewide, long-range plan with the assistance of the Iowa arts council to develop the arts in Iowa. The department is designated as the state agency for carrying out the plan.

f. Meet the informational needs of the three branches of state government.

g. Provide for the improvement of library services to all Iowa citizens and foster development and cooperation among libraries.

h. Establish a program of grants to cities and community groups for the development of community programs that provide local jobs for Iowa residents and at the same time promote a city's historical, ethnic, and cultural heritages through the development of festivals, music, drama, or cultural programs, or tourist attractions.

At least twenty-five percent of the funds appropriated for this program shall be used for the purpose of developing community programs eligible for grants under this subsection which were not in existence prior to the due date of grant applications each year.

A city or community group may submit applications to the director. Applications shall be reviewed by the arts council, the state historical society board, and the department of economic development, acting as an advisory committee to the department. The advisory committee shall submit recommendations to the director or designee regarding possible recipients and grant amounts.

The amount of a grant shall not exceed fifty percent of the cost of the community program and the application must demonstrate that the city or community group will provide the required matching money. In lieu of providing the entire match in money, a city or community group may substitute in-kind services for up to fifty percent of the matching requirement.

3. The department shall consist of the following:

a. Historical division.

b. Library division.

c. Arts division.

d. Public broadcasting division.

e. Other divisions created by rule.

f. Administrative section.

4. The director may create, combine, eliminate, alter or reorganize the organization of the department by rule except for those matters prescribed by sections 303.75 through 303.85.

5. The department by rule may establish advisory groups necessary for the receipt of federal funds or grants or the administration of any of the department's programs.

6. The divisions shall be administered by administrators who shall be appointed by the director and serve at the director's pleasure. However, the administrator of the public broadcasting division shall be appointed by and serve at the pleasure of the public broadcasting board and the administrator of the library division shall be appointed by and serve at the pleasure of the library commission. The administrators shall:

- a. Organize the activities of the division.
- b. Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.
- c. Control all property of the division.
- d. Perform other duties imposed by law.

87 Acts, ch 211, §3 SF 162
Subsection 4 amended

303.1A Director's duties.

Except for those matters prescribed by sections 303.75 through 303.85, the director shall:

1. Adopt rules that are necessary for the effective administration of the department.
2. Direct and administer the programs and services of the department.
3. Prepare the departmental budget request by September first of each year on the forms furnished, and including the information required by the department of management.
4. Accept, receive, and administer grants or other funds or gifts from public or private agencies including the federal government for the various divisions and the department.
5. Appoint and approve the technical, professional, secretarial, and clerical staff necessary to accomplish the purposes of the department subject to chapter 19A.

The director may appoint a member of the staff to be acting director who shall have the powers delegated by the director, in the director's absence.

The director may delegate the powers and duties of that office to the administrators. The director is not liable for the activities of the division of public broadcasting.

87 Acts, ch 211, §4 SF 162
Unnumbered paragraph 1 amended

303.2 Division responsibilities.

1. The administrative services section shall provide administrative, accounting, public relations and clerical services for the department, report to the director and perform other duties assigned to it by the director, except for those matters prescribed by sections 303.75 through 303.85. The administrative services section may provide services to the public broadcasting division.

2. The historical division shall:

- a. Administer and care for historical sites under the authority of the division, and maintain collections within these buildings.

Except for the state board of regents, a state agency which owns, manages, or administers a historical site must enter into an agreement with the department of cultural affairs under chapter 28E to insure the proper management, maintenance, and development of the site. For the purposes of this section, "historical site" is defined as any district, site, building, or structure listed on the national register of historic sites or identified as eligible for such status by the state historic preservation officer or that is identified according to established criteria by the state historic preservation officer as significant in national, state, and local history, architecture, engineering, archaeology, or culture.

- b. Encourage and assist local county and state organizations and museums devoted to historical purposes.

c. Develop standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance, operation, and interpretation of properties under the jurisdiction of the division. The administrator of the division shall serve as the state historic preservation officer, certified by the governor, pursuant to federal requirements.

d. Administer the archives of the state as defined in section 303.12.

e. Identify and document historic properties.

f. Prepare and maintain a state register of historic places, including those listed on the national register of historic places.

g. Conduct historic preservation activities pursuant to federal and state requirements.

h. Publish matters of historical value to the public, and pursue historical, architectural, and archaeological research and development which may include but are not limited to continuing surveys, excavation, scientific recording, interpretation, and publication of the historical, architectural, archaeological, and cultural sites, buildings, and structures in the state.

i. Buy or receive by other means historical materials including, but not limited to, artifacts, art, books, manuscripts, and images. Such materials are not personal property under section 18.12 and shall be received and cared for under the rules of the department. The historical division may sell or otherwise dispose of those materials according to the rules of the department and be credited for any revenues credited by the disposal less the costs incurred.

3. The library division:

a. May enter into interstate library compacts on behalf of the state of Iowa with any state which legally joins in the compacts as provided in section 303A.8.

b. Shall determine policy for providing information service to the three branches of state government and to the legal and medical communities in this state.

c. Shall coordinate a statewide interregional interlibrary loan and information network among libraries in this state and support activities which increase cooperation among all types of libraries.

d. Shall establish and administer a program for the collection and distribution of state publications to depository libraries.

e. Shall develop and adopt, in conjunction with the Iowa regional library system, long-range plans for the continued improvement of library services in the state. To insure that the concerns of all types of libraries are addressed, the division shall establish a long-range planning committee to review and evaluate progress and report findings and recommendations to the division and to the trustees of the Iowa regional library system at an annual meeting.

f. Shall develop in cooperation with the Iowa regional library system an annual plan of service for the Iowa regional library system and its individual members to insure consistency with the state long-range plan.

g. Shall establish and administer a statewide continuing education program for librarians and trustees.

h. Shall give to libraries advice and counsel in specialized areas which may include, but are not limited to, building construction and space utilization, children's services, and technological developments.

i. Shall obtain from libraries reports showing the condition, growth, and development of services provided and disseminate this information in a timely manner to the citizens of Iowa.

j. Shall establish and administer certification guidelines for librarians not covered by other accrediting agencies.

4. The arts division shall:

a. Make surveys as deemed advisable of existing artistic and cultural programs and activities within the state, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts.

b. Administer the program of agreements for indemnification by the state in the event of loss of or damage to special exhibit items established by sections 304A.21 through 304A.30.

c. Submit a report to the governor and to the general assembly not later than ten calendar days following the commencement of each first session of the general assembly concerning the studies undertaken during the biennium and recommending legislation and other action as necessary for the implementation and enforcement of this subsection and subchapter VI of this chapter.

87 Acts, ch 211, §5 SF 162
Subsection 1 amended

303.16 Historical resource development program.

1. The department shall administer a program of grants and loans for historical resource development throughout the state, subject to funds for such grants and loans being made available through the appropriations process or otherwise provided by law.

2. The purpose of the historical resource development program is to preserve, conserve, interpret, and enhance historical resources that will encourage and support the economic health and development of the state and the communities in which the resources are located. For this purpose, the department may make grants and loans as otherwise provided by law with funds as may be made available by applicable law.

3. The following persons are eligible to receive historical resource grants and loans:

a. County and city governments that are certified local governments by the historic preservation officer.

b. Nonprofit corporations.

c. Private corporations and businesses.

d. Individuals.

4. Grants and loans may be made for the following categories of purposes:

a. Acquisition and development of historical properties.

b. Preservation and conservation of historical properties.

c. Interpretation of historical resources.

Not less than twenty percent nor more than fifty percent of the funds in a single grant cycle shall be allocated to any one category.

5. Grants and loans are subject to the following restrictions:

a. Grants shall not be given to or received by any state agency, institution or its representative or agent.

b. Grants or loan funds shall not be used to support operating expenses or programs as defined by the department's rules.

c. Grant or loan funds shall not be used to support publications, public relations, or marketing expenses.

d. Grant or loan funds shall not support or partially support salaries or benefits of anyone employed directly by the recipient. This restriction does not prohibit the recipient from contracting with individuals for specific work of limited duration, under federal internal revenue service guidelines for contract work.

e. Not more than fifty thousand dollars or twenty percent of the annual appropriation, whichever is more, shall be granted to recipients within any single county in any given grant cycle.

f. Not more than twenty-five thousand dollars or ten percent of the annual appropriation, whichever is more, may be granted or loaned to any single recipient within a single fiscal year.

g. Grants or loans under this program may be given only after review by the state historical board.

h. All grant or loan funds must be expended by employing individuals or businesses located within the state of Iowa.

6. For each dollar of grant funds the following recipients must provide the following matching cash and in-kind resources:

a. For county and city governments and nonprofit corporations, fifty cents of which at least twenty-five cents must be in cash.

b. For other private corporations and businesses, one dollar of which at least seventy-five cents must be in cash.

c. For individuals, seventy-five cents of which at least fifty cents must be in cash.

7. The department may use twenty-five thousand dollars for administration of the grant and loan program.

8. a. The department may establish a historical resource revolving loan fund composed of any money appropriated by the general assembly for that purpose, and of any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in that fund. Each loan made under this section shall be for a period not to exceed ten years, shall bear interest at a rate determined by the state historical board, and shall be repayable to the revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants shall be eligible for no more than twenty-five thousand dollars in loans outstanding at any time under this program.

b. The department may:

(1) Contract, sue and be sued, and promulgate administrative rules necessary to carry out the provisions of this section, but the department shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

(2) Authorize payment from the revolving loan fund, from fees and from any income received by investments of money in the fund for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

87 Acts, ch 17, §8 SF 271

Subsections 3-8 affirmed and reenacted effective April 17, 1987; legislative findings; 87 Acts, ch 17, §1, 12 SF 271

303.18 Loan for exhibits.

Notwithstanding sections 302.1 and 302.1A, and after moneys appropriated under section 99E.32, subsection 5, for the fiscal year beginning July 1, 1987 and ending June 30, 1988 have been expended or obligated, the administrator of the historical division of the department of cultural affairs may obtain a loan of not exceeding three million fifty thousand dollars from moneys designated as the permanent school fund of the state in section 302.1, to be used to pay for equipment, planning, and construction costs of educational exhibits for the state historical museum. The exhibits will teach common school children of Iowa about Iowa's history, culture, and heritage. The department of revenue and finance shall make the payment upon receipt of a written request from the administrator of the historical division. Moneys received under this section as a loan that are not expended are available for expenditure during the fiscal year beginning July 1, 1988.

The historical division shall repay a portion of the amount of the loan together with annual interest payments due on the balance of the loan over a ten-year period commencing with the fiscal year beginning July 1, 1987. Payments shall be made from gross receipts and other moneys available to the historical division. Annual payments shall not be less than the amount of interest on the permanent school fund required to be transferred to the first in the nation in education foundation under section 302.1A or seventy-five percent of the gross receipts, whichever is greater. Payments of both principal and interest made by the state historical division under this section shall be paid quarterly and shall be

considered interest earned on the permanent school fund to the extent necessary for payment of interest to the first in the nation in education foundation under section 302.1A.

The treasurer of state shall determine the rate of interest that the historical division shall pay on the loan.

87 Acts, ch 233, §490 SF 511
NEW section

303.19 Reserved.

303.75 Definitions.

As used in this section and sections 303.76 through 303.85 unless the context otherwise requires:

1. "Administrator" means the administrator of the public broadcasting division of the department of cultural affairs.
2. "Board" means the Iowa public broadcasting board.
3. "Broadcast" means communications through a system that is receivable by the general public with programming designed for a large group of users.
4. "Narrowcast" means communications through systems that are directed toward a narrowly defined audience.
5. "Radio and television facility" means transmitters, towers, studios, and all necessary associated equipment for broadcasting, including closed circuit television.

87 Acts, ch 211, §6, 7 SF 162
See Code editor's note
Unnumbered paragraph 1 amended
NEW subsections 3 and 4
Subsections renumbered to alphabetize definitions

303.77 Board—advisory committees.

1. The Iowa public broadcasting board is created to plan, establish, and operate educational radio and television facilities and other telecommunications services including narrowcast and broadcast systems to serve the educational needs of the state. The board shall be composed of nine members selected in the following manner:

a. Four members shall be appointed by the governor so that the portion of the board membership appointed under this paragraph includes two male board members and two female board members at all times:

- (1) One member shall be appointed from the business community other than the commercial broadcasting industry and the telecommunications industry.
- (2) One member shall be appointed from the commercial broadcast industry.
- (3) One member shall be appointed from the membership of a fund-raising nonprofit organization financially assisting the Iowa public broadcasting division.
- (4) One member shall represent the general public.

b. Five members shall be selected in the manner provided in this paragraph and the gender balance of the membership shall be coordinated among the associations and boards making the appointments so that not more than three members serving under this paragraph at the same time are of the same gender.

- (1) One member shall be appointed by the state association of private colleges and universities.
- (2) One member shall be appointed jointly by the superintendents of the merged area schools created by chapter 280A.
- (3) One member shall be appointed jointly by the administrators of the area education agencies created by chapter 273.
- (4) One member who is knowledgeable about telecommunications shall be appointed by the state board of regents.
- (5) One member shall be appointed by the state board of education.

2. Board members shall serve a three-year term commencing on July 1 of the year of appointment. A vacancy shall be filled in the same manner as the original appointment for the remainder of the term.

Membership on the board does not constitute holding a public office and members shall not be required to take and file oaths of office before serving. A member shall not be disqualified from holding any public office or employment by reason of appointment to the board nor shall a member forfeit an office or employment by reason of appointment to the board.

3. The board shall appoint at least two advisory committees, each of which has no more than a simple majority of members of the same gender, as follows:

a. Advisory committee on the operation of the narrowcast system. The advisory committee shall be composed of members from among the users of the narrowcast system including representatives of institutions under the state board of regents, merged area schools, area education agencies, classroom teachers, school district administrators, school district boards of directors, the department of economic development, the department of education, and private colleges and universities.

b. Advisory committee on journalistic and editorial integrity. The division shall be governed by the national principles of editorial integrity developed by the editorial integrity project.

Duties of the advisory committees, and of additional advisory committees the board may from time to time appoint, shall be specified in rules of internal management adopted by the board.

Members of advisory committees shall receive actual expenses incurred in performing their official duties.

87 Acts, ch 211, §§-11 SF 162

Subsection 1 stricken and rewritten

Subsection 3, unnumbered paragraph 1 amended

Initial appointments; transition; 87 Acts, ch 211, §10 SF 162

Subsection 3, paragraphs a and b stricken and rewritten

Subsection 3, NEW unnumbered paragraph (last paragraph)

303.78 Meetings.

1. The board shall elect from among its members a president and a vice president to serve a one-year term. The board shall meet at least four times annually and shall hold special meetings at the call of the president or in the absence of the president by the vice president or by the president upon written request of four members. The board shall establish procedures and requirements relating to quorum, place, and conduct of meetings.

2. Board members shall receive actual expenses incurred in performing their official duties.

87 Acts, ch 211, §12 SF 162

Subsection 2 amended

303.79 Functions of the board.

1. The board may purchase, lease, and improve property, equipment, and services for educational telecommunications including the broadcast and narrowcast systems, and may dispose of property and equipment when not necessary for its purposes. The board and division administrator may arrange for joint use of available services and facilities.

2. The board shall apply for channels, frequencies, licenses, and permits as necessary for the performance of the board's duties.

3. This section does not prohibit institutions under the state board of regents and merged area schools under the department of education from owning, operating, improving, maintaining, and restructuring educational radio and television stations and transmitters now in existence or other educational narrowcast telecommunications systems and services. The institutions and schools may enter into agreements with the board for the lease or purchase of equipment and facilities.

4. The board may locate its administrative offices and production facilities outside the city of Des Moines.

5. The board shall adopt and update a design plan for educational telecommunications systems and services in this state. Not later than January 1, 1988, the board shall transmit to the general assembly a progress report concerning the development of the design plan. The design plan shall be adopted by the board not later than January 1, 1989, and shall be updated at least every two years thereafter. Copies of the design plan and updated design plan shall be made available to the governor and members of the general assembly upon request. The plan shall include a list of public utilities and private telecommunications companies being utilized by the educational telecommunications system; the cost of the system; the fees or charges established for the system; and information on areas where construction is required because facilities are not available from private telecommunications companies.

6. The board shall establish guidelines for and may impose and collect fees and charges for services. Fees and charges collected by the board for services shall be deposited to the credit of the division. Any interest earned on these receipts, and revenues generated under subsection 7, shall be retained and may be expended by the division subject to the approval of the board.

7. The board may make and execute agreements, contracts, and other instruments with any public or private entity and may retain revenues generated from these contracts. State departments and agencies, other public agencies, and governmental subdivisions and private entities including but not limited to institutions of higher education and nonpublic schools may enter into contracts and otherwise cooperate with the board.

8. The board may contract with engineers, attorneys, accountants, financial experts, and other advisors upon the recommendation of the administrator. The board may enter into contracts or agreements for such services with local, state, or federal governmental agencies.

9. The board may adopt rules to implement and administer the programs of the division.

10. The decision of the board is final agency action under chapter 17A.

87 Acts, ch 211, §13 SF 162
Section amended

303.82 Trusts.

Notwithstanding section 633.63, the board may accept and administer trusts and may authorize nonprofit foundations acting solely for the support of educational telecommunications including the broadcast and narrowcast systems to accept and administer trusts deemed by the board to be beneficial to the operation of the educational radio and television facility. The board and the foundations may act as trustees in such instances.

87 Acts, ch 211, §14 SF 162
Section amended

303.83 Revenue from contracts. Repealed by 87 Acts, ch 211, §17. SF 162
See §303.79(6-8).

303.84 State plan.

The board shall cause to be developed and adopt a state educational telecommunications design plan. Any agency of the state and any political subdivision of the state shall submit plans for the development of educational telecommunications systems to the board to be coordinated with the state educational telecommunications design plan adopted by the board. Private institutions and entities may submit educational telecommunications proposals for coordination.

87 Acts, ch 211, §15 SF 162
NEW section

303.85 Narrowcast operations.

The board shall not use, permit use, or permit resale of its telecommunications narrowcast system for other than educational purposes. The board, in the establishment and operation of its telecommunications narrowcast system, shall use facilities and services of the private telecommunications industry companies to the greatest extent possible and is prohibited from constructing telecommunications facilities unless comparable facilities are not available from the private telecommunications industry at comparable quality and price.

Notwithstanding chapter 476, the provisions of chapter 476 shall not apply to a public utility in furnishing a telecommunications service or facility to the board.

87 Acts, ch 211, §16 SF 162
NEW section

CHAPTER 304A

FINE ARTS PROJECTS AND INDEMNIFICATION FOR SPECIAL EXHIBITS

304A.22 Agreements to indemnify against loss of or damage to special exhibit items.

1. The administrator, after receiving the advice and recommendations of the council, may make agreements on behalf of the state to indemnify against loss of or damage to eligible special exhibit items of public educational, cultural, artistic, historical or scientific significance borrowed by nonprofit organizations or governmental entities as provided in this division.

2. The administrator, after consultation with the council, shall adopt rules for the administration of this division.

87 Acts, ch 204, §1 HF 315
Subsection 1 amended

304A.24 Applications.

A nonprofit organization or governmental entity desiring to obtain an indemnification agreement for special exhibit items it proposes to borrow may submit an application to the administrator. The application shall:

1. Describe each item to be covered by the indemnity agreement, including the estimated value of the item.

2. Show evidence that the items are eligible under section 304A.23.

3. Set forth policies, procedures, techniques and methods with respect to preparations for and the conduct of the exhibition, including arrangements for transportation of the items.

87 Acts, ch 204, §2 HF 315
See Code editor's note
Section amended

304A.28 Limitations.

1. Coverage under this division shall extend only to loss or damage in excess of the first twenty-five thousand dollars in connection with a single exhibition.

2. Indemnity agreements entered into by the director for a single exhibition or for any single location shall not exceed a total coverage for loss or damage of two million dollars, and all indemnity agreements entered into by the director shall not exceed an aggregate coverage for loss or damage of five million dollars at any one time. The agreements, together with the claims paid to date, shall not exceed five million dollars at any one time.

87 Acts, ch 204, §3 HF 315
Subsection 2 amended

CHAPTER 306

ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS

306.6 Functional classification board.

1. A functional classification board shall be appointed for each county and shall operate under procedural rules promulgated by the department under the provisions of chapter 17A. Said board shall consist of three members to be appointed as follows: The department shall appoint one member from the staff of the department, the county board of supervisors shall appoint one member who shall be either the county engineer or one of its own members, and the third member shall be a municipal official from within the county who shall be appointed by a majority of the mayors of the cities of the county. The mayors shall meet at the call of the chairperson of the county board of supervisors who shall act as chairperson of the meeting without vote. In the event the mayors cannot agree to and appoint this member within thirty days after the call of the meeting by the chairperson, the two members previously appointed shall select the third member. The board shall serve without additional compensation and shall:

a. Classify each segment of each rural public road and each municipal street in the county in accordance with the classifications found in section 306.1.

b. Establish continuity between the systems within the county and with the systems of adjacent counties.

c. File a copy of the proposed road classification in the office of county engineer for public information and hold a public hearing before final approval of a road classification action. Notice of the date, the time, and the place of the hearing, and the filing of the proposed road classification for public information shall be published in an official newspaper in general circulation throughout the affected area as provided in section 331.305.

d. Report the selected classifications to the department. The department shall review the reports of the county classification boards and may:

(1) Alter the classification of roads coinciding with or crossing county lines to provide continuity of the various county systems.

(2) Adjust the mileage of roads classified in the trunk and trunk collector systems to assure equitable distribution among the counties of the total mileage of such systems.

(3) Any action authorized under subparagraphs (1) and (2) of this paragraph "d" shall not be taken by the department until the proposed action has been thoroughly discussed with the affected county classification boards and their comments heard.

2. A state functional classification review board is created, consisting of one state senator appointed by the majority leader of the senate, one state representative appointed by the speaker of the house of representatives, one supervisor appointed by the Iowa state association of county supervisors, one engineer appointed by the Iowa county engineers' association, two persons appointed by the league of Iowa municipalities, one of whom shall be a licensed professional engineer, and two persons appointed by the department, one of whom shall be a commissioner and the other a staff member. This board shall select a permanent chairperson from among its members by majority vote of the total membership. Except as otherwise provided, the members of the board shall serve without additional compensation to the salary and expenses authorized for the office or position held by the member. The supervisor appointed by the Iowa state association of county supervisors, the engineer appointed by the Iowa county engineers' association, and the two persons appointed by the league of Iowa municipalities shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board from funds allocated under section 312.2, subsection 12. The legislative members shall

be paid for their actual and necessary expenses and, when the general assembly is not in session, per diem as provided in sections 2.10 and 2.12. The department's members of the board shall be reimbursed for their actual and necessary expenses from the funds appropriated pursuant to section 313.5.

It shall be the responsibility of the state functional classification review board to hear any and all appeals from classification boards or board members, relative to disputes arising out of the functional classification of any segment of highway or street. It shall also be the responsibility of the board to establish the necessary guidelines, procedures, and the time limits to be followed in transferring jurisdiction in accordance with section 306.8. The state functional classification review board shall have the authority and the responsibility to make final administrative determinations based on sound functional classification principles for all disputes relative to functional classification including those disputes relative to the transfer of jurisdictions. The review board shall also serve, when requested jointly by state and local jurisdictions, as an advisory committee for review and adjustment of construction and maintenance guidelines used in updating road and street needs studies.

It is the intent of the general assembly that effective July 1, 1979 the functional reclassification of roads shall be implemented as provided by law.

87 Acts, ch 43, §6 SF 265
Subsection 1, paragraph c amended

306.23 Notice—preference of sale.

For the sale of unused right-of-way notice of intention to sell the tract, parcel, or piece of land, or part thereof, must be sent, not less than ten days prior to the sale, by certified mail, by the agency in control of the land, to the last known address of the present owner of adjacent land from which the tract, parcel, piece of land, or part thereof, was originally bought or condemned for highway purposes, and if located in a city, to the mayor. The notice shall give an opportunity to the present owner of adjacent property to be heard and make offers for the tract, parcel, or piece of land to be sold, and if the offer is equal to or exceeds in amount any other offer received, it shall be given preference by the agency in control of the land. Neglect or failure for any reason, to comply with the notice, does not prevent the giving of a clear title to the purchaser of the tract, parcel, or piece of land.

87 Acts, ch 35, §1 SF 129
Section amended

306.27 Changes for safety, economy, and utility.

The state department of transportation as to primary roads and the boards of supervisors as to secondary roads on their own motion may change the course of any part of any road or stream, watercourse or dry run and may pond water in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten a road, or to cut off dangerous corners, turns or intersections on the highway, or to widen a road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse or dry run upon the highway. The department shall conduct its proceedings in the manner and form prescribed in chapter 472, and the board of supervisors shall use the form prescribed in sections 306.28 to 306.37 or as provided in chapter 472. Changes are subject to chapter 455B.

87 Acts, ch 61, §1 HF 409
Section amended

306.30 Service of notice.

Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that

they cannot be found in the county, shall be served by publishing the notice as provided in section 331.305 and also by mailing by certified mail a copy of the notice to the owner and mortgagee of record addressed to the owner's and mortgagee of record's last known address, and the county auditor shall furnish to the board of supervisors the county auditor's affidavit that the notice has been sent, which affidavit shall be conclusive evidence of the mailing of the notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised the right to select an appraiser.

87 Acts, ch 43, §7 SF 265
Unnumbered paragraph 2 amended

306.42 Transfer of rights of way.

1. This section is intended to vest all documents of title in road right of way in the jurisdiction responsible for the road. This section establishes a simple method to transfer road rights of way by quitclaim deed and to authorize the use of available descriptions, plats, maps or engineering drawings to effect such transfers and to provide an orderly method by which such transfers may be filed, indexed and recorded.

2. The department shall transfer by quitclaim deed to the county or to the city having jurisdiction over a road, all of the state's legal or equitable title and interest in right of way for the road or street and may transfer any adjacent unused right of way or land in excess of that needed as right of way. The deed shall be executed by the director of the department. However, if the department owns any adjacent unused right of way in excess of that needed as right of way which is located outside the incorporated limits of a city and is suitable for purposes specified in section 111A.4, subsection 2, the department may, at the request of the county and the county conservation board, transfer the property by quitclaim deed to the county for the use and benefit of the county conservation board.

3. The county or the city shall transfer by quitclaim deed to the state department of transportation when having jurisdiction over a road, all of the county's or the city's legal or equitable title and interest in rights of way for the road and may transfer any adjacent unused right of way or land in excess of that needed as right of way. The deed shall be executed by the chairperson of the board of supervisors by order of the board for county roads and by the mayor or city manager by order of the city council for city streets.

4. Transfers under this section shall be subject to the right of a utility, association, company or corporation to continue in possession of a right of way in use at the time of the transfer. Transfers shall be subject to rights of ingress and egress whether excepted, reserved or granted by the transferring authority to land or to owners of land adjacent to the right of way. Transfers shall include an index of parcels transferred by the character of the instrument or proceeding, the grantor and grantee, and date of the last instrument or proceeding acquiring rights to each parcel. Transfers shall locate the right of way by quarter-quarter section, township and range or if so acquired, by lot, block and subdivision. The transferring jurisdiction shall transmit to the receiving jurisdiction all available original documents of title or a certified true copy if the right of way was acquired by condemnation or the original deed is lost. Transfers shall be recorded and indexed in the county in which the land is located.

5. Notwithstanding requirements of chapter 114 and sections 306.22, 364.7, 409.12, 409.14 and 471.20, legal descriptions, plats, maps or engineering drawings used to describe transfers of right of way shall, where available, be descriptions, plats, maps or engineering drawings of record and shall be incorporated by reference to such title instrument or proceedings. Where a part but not all of the land acquired by a single conveyance or condemnation is being transferred, the description of that part to be transferred shall be abstracted from the present legal description, plat, map or engineering drawing of record.

6. Notwithstanding any other provision of the Code, for transfers of roads and streets made after May 1, 1987, neither the transferring jurisdiction or the receiving jurisdiction shall be held liable for any claim or damage for any act or omission relating to the design, construction, or maintenance of the road or street that occurred prior to the effective date of the transfer. This paragraph shall apply to all transfers pursuant to this chapter or section 313.2.

87 Acts, ch 232, §18 SF 518
NEW subsection 6

SOIL AND WATER CONSERVATION IMPACT

306.50 Construction program notice.

The appropriate highway authority shall provide copies of its annual construction program to the soil and water conservation district commissioners' office in each county. The soil and water conservation district commissioners' office shall review the construction program submitted by each highway authority to determine those projects which may impact upon soil erosion and water diversion or retention.

87 Acts, ch 23, §7 SF 382
Section amended

306.51 Soil erosion impact.

The soil and water conservation district commissioners shall, within thirty days after receipt of the construction program, notify the appropriate highway authority of the projects which will impact upon soil erosion and water drainage and request that the appropriate highway authority notify them of the date, time, and place for holding the design hearing on preliminary plans.

87 Acts, ch 23, §8 SF 382
Section amended

306.52 Review of plans.

Upon examining the preliminary plans on a road project, the soil and water conservation district commissioners may review each road project for which a drainage structure is required. The soil and water conservation commissioners shall ascertain whether or not the proposed erosion control or runoff control structure is suitable to reduce the velocity of runoff, reduce gully erosion, or provide for sedimentation or other improvement that would enhance soil conservation. The soil and water conservation commissioners shall also ascertain whether any other aspect of the road construction will affect soil and water conservation.

87 Acts, ch 23, §9 SF 382
Section amended

306.53 Submission of recommendations—contribution to cost.

The soil and water conservation district commissioners shall submit their findings and recommendations to the appropriate highway authority not later than twenty days following examination of the construction plans.

The appropriate highway authority shall respond to the soil and water conservation district commissioners and indicate its agreement to the suggested installation or its rejection of the proposal.

Where feasible and cost-sharing funds are available, the soil and water conservation district may contribute in part or in its entirety to any additional cost for the erosion control structure.

87 Acts, ch 23, §10 SF 382
Section amended

306.54 Reporting.

If the proposal is rejected, the appropriate highway authority shall provide a written report documenting the reason for the rejection to the soil and water conservation district commissioners and the state department of transportation.

The state department of transportation shall submit a written report to the general assembly not later than March 1 of each year. The report shall contain only a list of those highway projects where a disagreement exists between the department and the soil and water conservation district commissioners and the reasons for rejecting the recommendations of the soil and water conservation district commissioners. The report shall be filed with the secretary of the senate and the chief clerk of the house of representatives.

87 Acts, ch 23, §11 SF 382
Section amended

CHAPTER 306D

SCENIC ROUTES

306D.1 Statement of purpose—intent.

1. The general assembly finds that:

a. The state offers numerous regions through which people can drive for the pleasure of viewing unusually scenic and interesting landscapes; however, routes to and through these areas have not been adequately identified for Iowans and state visitors.

b. Among those things that attract motorists to the state's landscape are agricultural lands, forests, river basins, distinctive landforms, interesting architecture, metropolitan areas, small rural towns, and historic sites.

c. The landscape qualities of unusually scenic routes throughout the state have not been protected from visual and resource deterioration particularly along routes which pass near the state's nationally significant areas such as the bluffs of the Mississippi and Missouri rivers, the Amana colonies, the Herbert Hoover national historic site, federal reservoirs, communities surrounding the state's natural lakes, the Des Moines river greenbelt, the great river road, and many others.

d. A principal goal of economic development in this state is to increase the influence which travel and tourism have on the state's economic expansion.

e. Iowans and visitors should be encouraged to travel to and through unusually scenic areas of the state.

f. A program should be established, following a statewide plan, to identify and promote highways and secondary routes which pass through unusually scenic landscapes and to protect and enhance the scenic qualities of the landscape through which these routes pass.

2. In addition to other goals for the program, it is the intention of the general assembly that the scenic highways program be coordinated with the state's open space program.*

87 Acts, ch 175, §1 HF 623

*Open space program, ch 111E

NEW section

306D.2 Statewide scenic highways program—objectives and agency duties.

1. The department of transportation shall prepare a statewide, long-range plan for the protection, enhancement, and identification of highways and secondary roads which pass through unusually scenic areas of the state as identified in section 306D.1. The department of natural resources, department of economic development, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies having jurisdiction over land in the state shall be encouraged to assist in preparing the plan. The plan shall be coordinated with the state's open space plan if a state open space plan has been approved by the general assembly. The plan shall include, but is not limited to, the following elements:

a. Preparation of a statewide inventory of scenic routes and ranking of relative uniqueness for each route. The degree to which these routes suffer from negative visual intrusions shall be documented.

b. Recommended techniques for preserving and enhancing the scenic qualities associated with each route.

c. Forecasts of significant changes in traffic volumes and environmental, social, and economic impacts if scenic routes are publicly identified and promoted as tourism attractions.

d. Recommended techniques for incorporating scenic highway routes in state and local tourism development and marketing programs.

e. Landscape management needs including maintenance, rehabilitation, and improvements to scenic areas.

f. Funding levels needed to accomplish the statewide scenic highway program.

g. Recommendations of how federal and state transportation programs can be modified or developed to assist the state's scenic highway program.

2. The preparation of the plan is subject to an appropriation by the general assembly for that purpose. The plan shall be submitted to the general assembly by January 15, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state agencies, federal agencies, and private organizations with interests in scenic highways. The comments shall be submitted to the general assembly.

87 Acts, ch 175, §2 HF 623
NEW section

306D.3 Plan recommendations and pilot projects.

1. The department's recommendations to the general assembly shall include proposed legislation for the state to acquire and protect scenic landscapes along public roads and highways.

2. Before January 1, 1989, the department shall identify four pilot scenic highway routes across two or more counties each for trial promotion in the state's tourism marketing program.

87 Acts, ch 175, §3 HF 623
NEW section

CHAPTER 311

SECONDARY ROAD ASSESSMENT DISTRICTS

311.12 Publication of notice.

The notice shall be published as provided in section 331.305 in the county as near as practicable to the district. Proof of the publication shall be made by the publisher by affidavit filed with the county engineer.

87 Acts, ch 43, §8 SF 265
Section amended

311.31 Previous assessments not invalidated. Repealed by 87 Acts, ch 115, §83. SF 374

CHAPTER 312

ROAD USE TAX FUND

312.2 Allocations from fund.

The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund.

the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-five percent.
2. To the secondary road fund of the counties, twenty-eight percent.
3. To the farm-to-market road fund, nine percent.
4. To the street construction fund of the cities, eighteen percent.
5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of seven hundred thousand dollars, credit annually from the road use tax fund the sum of nine hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hundredths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, section 313.4, subsection 2, and section 307.45, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium. The cost of each highway railroad grade crossing repair project shall be allocated in the following manner:
 - a. Twenty percent of the project cost shall be paid by the railroad company.
 - b. Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.
 - c. Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.
6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries.
7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred thousand dollars.
8. The treasurer of state, before making any allotments to counties under this section, shall reduce the allotment to any county for the secondary road fund by an amount by which the total funds that the county transferred or provided during the prior fiscal year under section 331.429, subsection 1, paragraphs "a," "b," "d," and "e", are less than seventy-five percent of the maximum funds that the county could have transferred in the prior fiscal year under section 331.429, subsection 1, paragraphs "a" and "b". Funds remaining in the secondary road fund of the counties due to a reduction of allocations to counties for failure to maintain a minimum local tax effort shall be reallocated to counties that are not reduced under this subsection pursuant to the allocation provisions of section 312.3, subsection 1, based upon the needs and area of the county. Information necessary to make allocations under this subsection shall be provided by the state department of transportation or the state comptroller upon request by the treasurer of state.
9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the division of soil conservation in the department of agriculture and land stewardship two hundred fifty thousand dollars from the road use tax funds. The division of soil conservation, in co-operation with the state department of transportation and the department of natural resources shall

expend the funds, for the lease or other use of land intended for the planting or maintenance of wind erosion control barriers designed to reduce wind erosion interfering with the maintenance of highways in the state or the safe operation of vehicles on the highway. However, the funds shall not be expended for wind erosion control barriers located more than forty rods from the highway.

10. The treasurer of state shall establish a great river road fund and at the request of the state department of transportation, shall credit monthly before making the allotments provided for in this section, sufficient funds to cover the anticipated costs, as identified by the state department of transportation, for the acquisition and construction of eligible highway-associated project components.

11. The treasurer of the state shall establish a revolving fund for use by affected jurisdictions for great river road projects. Funds shall be advanced at the request of the state department of transportation to affected jurisdictions as noninterest loans and shall be utilized for the construction of eligible great river road highway projects. Funds may be advanced from either the primary road fund or the farm-to-market road fund. The amount advanced and not reimbursed shall not exceed five million dollars at any one time from either the primary road fund or the farm-to-market road fund, nor shall the amount advanced and not reimbursed at any one time from all funds combined exceed seven million five hundred thousand dollars.

Funds advanced as provided by this subsection shall be administered by the state department of transportation. The department shall require repayment of the advanced funds within ten years. The treasurer of state shall, upon the request of the state department of transportation, transfer a portion of the affected local jurisdiction's allocation sufficient to meet repayment requirements if the terms of the individual agreements are not complied with.

12. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of five thousand dollars to be used by the state department of transportation for payment of expenses authorized under section 306.6, subsection 2. The expense allowance shall be in accordance with the established expense reimbursement policy for employees of the state department of transportation. All unobligated funds shall at the end of each fiscal year revert to the road use tax fund.

13. The treasurer of state, before making the other allotments provided for in this section, shall credit annually to the primary road fund from the road use tax fund the sum of four million four hundred thousand dollars and to the farm-to-market road fund from the road use tax fund the sum of one million five hundred thousand dollars for partial compensation of allowing trucks to operate on the roads of this state as provided in section 321.463.

14. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the state department of transportation one hundred thousand dollars from the road use tax funds. The state department of transportation shall expend the funds for the planting or maintenance of trees or shrubs in shelter belts for erosion control to reduce wind erosion interfering with the maintenance of highways in the state or the safe operation of vehicles on the highways.

15. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the state department of transportation from the road use tax fund an amount equal to twenty-five cents on each title issuance for state and federal odometer law enforcement purposes. This subsection is effective for the fiscal period beginning July 1, 1984 and ending June 30, 1989.

16. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the revitalize Iowa's sound economy fund, created under section 315.2, the revenue accruing to the road use tax fund in the amount equal to two thirds of the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 324.3:

(1) For the period July 1, 1985, through December 31, 1985, the amount of excise tax collected from two cents per gallon.

(2) From and after January 1, 1986, the amount of excise tax collected from three cents per gallon.

b. From the excise tax on special fuel for diesel engines:

(1) For the period July 1, 1985, through December 31, 1985, the amount of excise tax collected from one cent per gallon.

(2) For the period January 1, 1986, through December 31, 1986, the amount of excise tax collected from two cents per gallon.

(3) From and after January 1, 1987, the amount of excise tax collected from three cents per gallon.

17. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the public transit assistance fund, created under section 601J.6, an amount equal to one fortieth of the revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "b".

18. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the state department of transportation for county, city and state traffic safety improvement projects an amount equal to one-half of one percent of moneys credited to the road use tax fund.

19. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the motorcycle rider education fund established in section 321.189, subsection 3, an amount equal to one dollar per year of license validity for each issued or renewed motor vehicle license which is valid for the operation of a motorcycle. Moneys credited to the motorcycle rider education fund under this subsection shall be taken from moneys credited to the road use tax fund under section 423.24.

87 Acts, ch 115, §47 SF 374; 87 Acts, ch 206, §1 SF 399; 87 Acts, ch 232, §19, 20 SF 518
 Subsection 10 amended
 Subsection 17 amended
 NEW subsection 18
 NEW subsection 19

CHAPTER 313

IMPROVEMENT OF PRIMARY ROADS

313.63 Action by adjoining state.

The department shall not enter into an agreement of acceptance until the adjoining state enters into an agreement to accept ownership of that portion of the bridge being within the adjoining state.

87 Acts, ch 232, §21 SF 518
 Section amended

CHAPTER 313A

INTERSTATE BRIDGES

313A.34 Agreements with other states.

The director of transportation may, subject to the approval of the state transportation commission, enter into such agreement or agreements with other state highway commissions and the governmental agencies or subdivisions of the state of Iowa or other states and with federal bridge commissions as they shall

find necessary or convenient to carry out the purposes of this chapter, and is authorized to do any and all acts contained in such agreement or agreements that are necessary or convenient to carry out the purposes of this chapter. Such agreements may include, but shall not be restricted to, the following provisions:

1. A provision that the department shall assume and have complete responsibility for the operation of such bridges and approaches thereto, and with full power to impose and collect all toll charges from the users of such bridges and to disburse the revenue derived therefrom for the payment of principal and interest on any revenue bonds herein provided for and to carry out the purposes of this chapter.

2. A provision that the department shall provide for the issuance, sale, exchange or pledge, and payment of revenue bonds payable solely from the revenues derived from the imposition and collection of tolls upon such toll bridges.

3. A provision that the department, after consultation with the other governmental agencies or subdivisions who are parties to such agreements, shall fix and revise the classifications and amounts of tolls to be charged and collected from the users of the toll bridges, with the further provision that such toll charges shall be removed after all costs of planning, designing, and construction of such toll bridges and approaches thereto and all incidental costs shall have been paid, and all of said revenue bonds, and interest thereon, issued pursuant to this chapter shall have been fully paid and redeemed or funds sufficient therefor have been set aside and pledged for that purpose.

4. A provision that all acts pertaining to the design and construction of such toll bridges may be done and performed by the department and that any and all contracts for the construction of such toll bridges shall be awarded in the name of the department.

5. A provision that the state of Iowa and adjoining state and all governmental agencies or subdivisions party to such agreement shall be reimbursed out of the proceeds of the sale of such bonds or out of tolls and revenues as herein allowed for any advances they may have made or expenses they may have incurred for any of the purposes for which said revenue bonds may be issued, after duly verified itemized statements of such advances and expenses have been submitted to and been approved by all parties to such agreement.

6. A provision for the division of ownership with the adjoining state and for a proportional division of the maintenance costs of the bridge when all outstanding indebtedness or other obligations payable from the revenues of the bridge have been paid.

87 Acts, ch 232, §22 SF 518
Subsection 6 stricken and rewritten

CHAPTER 315

REVITALIZE IOWA'S SOUND ECONOMY FUND

315.6 Funding of projects.

Qualifying projects may be funded as follows:

1. Primary road and state park road projects may be financed entirely by the fund, or by combining money from the fund with money from the primary road fund, federal aid primary funds received by the state, money from cities or counties raised through the sale of general obligation bonds of the cities or counties, other city or county revenues, or money from participating private parties.

2. Secondary road, state park road, and county conservation parkway projects may be funded entirely by the fund or by combining money from the fund with money from the county's portion of road use tax funds, federal aid secondary

funds, other county revenues, money raised through the sale of general obligation bonds of the county, or money from participating private parties.

3. City street and state park road projects may be funded entirely by the fund, or by combining money from the fund with money from the city's portion of road use tax funds, federal aid urban system funds, other municipal revenues, money raised through the sale of general obligation bonds of the city, or money from participating private parties.

A county or city may, at its option, apply moneys allocated for use on secondary road or city street projects under section 315.4, subsection 2 or 3, toward qualifying primary road, state park road, and county conservation parkway projects.

87 Acts, ch 172, §1 HF 472
Section amended

CHAPTER 316

RELOCATION OF PERSONS DISPLACED BY HIGHWAYS

316.15 Federal grants—payment of right-of-way and relocation assistance benefits.

The department may do all things necessary to carry out the provisions of this chapter and to secure federal grants to make the payments required by this chapter, but the absence of federal aid to make such payments shall not discharge the obligation to make the payments. The department is authorized to pay all right-of-way and relocation assistance benefits in the full amount authorized by federal standards and rules. In order to avoid delays, payment for such benefits made in cooperation with the federal government may be advanced from the primary road fund.

87 Acts, ch 232, §23 SF 518
Section amended

CHAPTER 317

WEEDS

317.8 Duty of secretary of agriculture or secretary's designee.

The secretary of agriculture or the secretary's designee is vested with the following duties, powers and responsibilities:

1. The secretary or the secretary's designee shall serve as state weed commissioner, and shall co-operate with all boards of supervisors and weed commissioners, and shall furnish blank forms for reports made by the supervisors and commissioners.

2. The secretary or the secretary's designee may, upon recommendation of the state botanist, temporarily declare noxious any new weed appearing in the state which possesses the characteristics of a serious pest.

3. The secretary or the secretary's designee shall aid the supervisors in the interpretation of the weed law, and make suggestions to promote extermination of noxious weeds.

4. The secretary or the secretary's designee shall aid the supervisors in enforcement of the weed law as it applies to all state lands, state parks and primary roads, and may impose a maximum penalty of a ten dollar fine for each

day, up to ten days, that the state agency in control of land fails to comply with an order for destruction of weeds made pursuant to this chapter.

87 Acts, ch 115, §48 SF 374
Section amended

317.26 Alternative remediation practices.

The director of the department of natural resources, in cooperation with the secretary of agriculture and county conservation boards or the board of supervisors, shall develop and implement projects which utilize alternative practices in the remediation of noxious weeds and other vegetation within highway rights-of-way.

87 Acts, ch 225, §231 HF 631
NEW section

CHAPTER 321

MOTOR VEHICLES AND LAW OF THE ROAD

321.1 Definitions of words and phrases.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

- a. Any device moved by human power.
- b. Any device used exclusively upon stationary rails or tracks.
- c. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.
- d. Any steering axle, dolly, auxiliary axle or other integral part of another vehicle which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

2. a. "Motor vehicle" means a vehicle which is self-propelled, but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires and are not operated upon rails.

b. "Used motor vehicle" or "second-hand motor vehicle" means a motor vehicle of a type subject to registration under the laws of this state which has been sold "at retail" as defined in chapter 322 and previously registered in this or any other state.

c. "New car" means a car which has not been sold "at retail" as defined in chapter 322.

d. "Used car" means a car which has been sold "at retail" as defined in chapter 322 and previously registered in this state or any other state.

e. "Car" or "automobile" means a motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

3. a. "Motorcycle" means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. "Motorized bicycle" or "motor bicycle" means a motor vehicle having a saddle or a seat for the use of a rider and designed to travel on not more than three wheels in contact with the ground, with an engine having a displacement no greater than fifty cubic centimeters and not capable of operating at a speed in excess of twenty-five miles per hour on level ground unassisted by human power.

c. "Bicycle" means a device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.

4. "*Motor truck*" means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

5. "*Light delivery truck*," "*panel delivery truck*" or "*pickup*" means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

6. "*Truck tractor*" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

7. "*Farm tractor*" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

8. "*Road tractor*" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

9. "*Trailer*" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

10. "*Semitrailer*" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word "trailer" is used in this chapter, same shall be construed to also include "semitrailer."

A "semitrailer" shall be considered in this chapter separately from its power unit.

11. "*Trailer coach*" means either a trailer or semitrailer designed for carrying persons.

12. "*Specially constructed vehicle*" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

13. "*Reconstructed vehicle*" means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

14. "*Essential parts*" mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

15. "*Foreign vehicle*" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

16. "*Implement of husbandry*" means every vehicle which is designed for agricultural purposes and exclusively used, except as herein otherwise provided, by the owner thereof in the conduct of the owner's agricultural operations. Implements of husbandry shall also include:

a. Portable livestock loading chutes without regard to whether such chutes are used by the owner in the conduct of the owner's agricultural operations, provided, that such chutes are not used as a vehicle on the highway for the purpose of transporting property.

b. Any vehicle which is principally designed for agricultural purposes and which is moved during daylight hours for a distance not to exceed one hundred miles by a person either:

(1) From a place at which the vehicles are manufactured, fabricated, repaired, or sold to a farm site or a retail seller or from a retail seller to a farm site;

(2) To a place at which the vehicles are manufactured, fabricated, repaired, or sold from a farm site or a retail seller or to a retail seller from a farm site; or

(3) From one farm site to another farm site.

For the purpose of this subsection and sections 321.383 and 321.453, "*farm site*" means a place or location at which vehicles principally designed for agricultural purposes are used or intended to be used in agricultural operations or for the purpose of exhibiting, demonstrating, testing, or experimenting with the vehicles.

c. Any semitrailer converted to a full trailer by the use of a dolly used by the owner in the conduct of the owner's agricultural operations to transport agricultural products being towed by a farm tractor provided the vehicle is operated in compliance with the following requirements:

(1) The towing unit is equipped with a braking device which can control the movement of and stop the vehicles. When the semitrailer is being towed at a speed of twenty miles per hour, the braking device shall be adequate to stop the vehicles within fifty feet from the point the brakes are applied. The semitrailer shall be equipped with brakes upon all wheels.

(2) The towing vehicle shall be equipped with a rear view mirror to permit the operator a view of the highway for a distance of at least two hundred feet to the rear.

(3) The semitrailer shall be equipped with a turn signal device which operates in conjunction with or separately from the rear taillight and shall be plainly visible from a distance of one hundred feet.

(4) The semitrailer shall be equipped with two flashing amber lights one on each side of the rear of the vehicle and be plainly visible for a distance of five hundred feet in normal sunlight or at night.

(5) The semitrailer shall be operated in compliance with sections 321.123 and 321.463.

d. All-terrain vehicles.

e. All self-propelled machinery operated at speeds of less than thirty miles per hour, specifically designed for, or especially adapted to be capable of, incidental over-the-road and primary off-road usage, and used exclusively for the application of plant food materials, agricultural limestone or agricultural chemicals, and not specifically designed or intended for transportation of agricultural limestone and such chemicals and materials. Such machinery shall be operated in compliance with section 321.463.

Notwithstanding the other provisions of this subsection any vehicle covered thereby if it otherwise qualifies may be registered as special mobile equipment, or operated or moved under the provisions of sections 321.57 to 321.63, if the person in whose name such vehicle is to be registered or to whom a special plate or plates are to be issued elects to do so and under such circumstances the provisions of this subsection shall not be applicable to such vehicle, nor shall such vehicle be required to comply with the provisions of sections 321.384 to 321.429, when such vehicle is moved during daylight hours, provided however, the provisions of section 321.383, shall remain applicable to such vehicle.

17. "*Special mobile equipment*" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including trailers and bulk spreaders which are not self-propelled having a gross weight of not more than twelve tons used for the transportation of fertilizers and chemicals used for farm crop production, and other equipment used primarily for the application of fertilizers and chemicals in farm fields or for farm storage, but not including trucks mounted with applicators of such products, road construction or maintenance machinery and ditch-digging apparatus. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this

subsection; provided that nothing contained in this section shall be construed to include portable mills or cornshellers mounted upon a motor vehicle or semi-trailer.

18. "*Pneumatic tire*" means every tire in which compressed air is designed to support the load.

19. "*Solid tire*" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

20. "*Metal tire*" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

21. "*Where a vehicle is kept*" shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

22. "*Garage*" means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

23. "*Combination*" or "*combination of vehicles*" shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semitrailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

24. "*Gross weight*" shall mean the empty weight of a vehicle plus the maximum load to be carried thereon. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

"*Unladen weight*" means the weight of a vehicle or vehicle combination without load.

25. "*Combined gross weight*" shall mean the gross weight of a motor vehicle plus the gross weight of a trailer or semitrailer to be drawn thereby.

26. "*Authorized emergency vehicle*" means vehicles of the fire department, police vehicles, ambulances and emergency vehicles owned by the United States, this state or any subdivision of this state or any municipality of this state, and privately owned ambulances, and fire, rescue or disaster vehicles as are designated or authorized by the director of transportation under section 321.451.

27. "*School bus*" means every vehicle operated for the transportation of children to or from school, except vehicles which are: (a) Privately owned and not operated for compensation, (b) Used exclusively in the transportation of the children in the immediate family of the driver, (c) Operated by a municipally or privately owned urban transit company for the transportation of children as part of or in addition to their regularly scheduled service, or (d) Designed to carry not more than nine persons as passengers, either school owned or privately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of paragraph "d" of this section shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

28. "*Railroad*" means a carrier of persons or property upon cars operated upon stationary rails.

29. "*Railroad train*" means an engine or locomotive with or without cars coupled thereto, operated upon rails.

30. "*Railroad corporation*" means any corporation organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

31. "*Hazardous material*" means a substance or material which has been determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

32. "*Commercial vehicle*" means a vehicle designed principally to transport passengers or property of any kind if any or all of the following apply:

- a. The vehicle or any combination of vehicles has a gross weight of ten thousand one or more pounds.
- b. The vehicle has a gross weight rating of ten thousand one or more pounds.
- c. The vehicle is designed to transport more than fifteen passengers, including the driver.
- d. The vehicle is used in the transportation of hazardous material in a quantity requiring placarding.

33. "*Department*" means the state department of transportation. "*Commission*" means the state transportation commission.

34. "*Director*" means the director of the state department of transportation or the director's designee.

35. "*Person*" means every natural person, firm, copartnership, association, or corporation. Where the term "person" is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesperson, or otherwise.

36. "*Owner*" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

37. "*Nonresident*" means every person who is not a resident of this state.

38. "*Dealer*" means every person engaged in the business of buying, selling or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

39. "*Transporter*" means a person engaged in the business of delivering vehicles of a type required to be registered or titled in this state who has received authority to make delivery as specified by rules adopted by the department.

40. "*Manufacturer*" means every person engaged in the business of fabricating or assembling vehicles of a type required to be registered. It does not include a person who converts, modifies or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class "B" motor home as defined in section 321.124.

"*Completed motor vehicle*" means a motor vehicle which does not require any additional manufacturing operations to perform its intended function except the addition of readily attachable equipment, components or minor finishing operations.

"*Final stage manufacturer*" means a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed vehicle. A final stage manufacturer shall furnish to the department a document which identifies that the vehicle was incomplete prior to that manufacturing operation. The identification shall include the name of the incomplete vehicle manufacturer, the date of manufacture, and the vehicle identification number to ascertain that the document applies to a particular incomplete vehicle.

"*Incomplete vehicle*" means an assemblage, as a minimum, consisting of a frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be a part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable equipment, components, or minor finishing operations.

41. "*Established place of business*" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

42. "*Operator*" means every person, other than a chauffeur, who is in actual physical control of a motor vehicle upon a highway.

43. "*Chauffeur*" means a person who operates a motor vehicle, including a school bus, in the transportation of persons for wages, compensation or hire, or a person who operates a truck tractor, road tractor or any motor truck which is required to be registered at a gross weight classification exceeding five tons, or any such motor vehicle exempt from registration which would be within the gross weight classification if not so exempt. A person is not a chauffeur when the operation of the motor vehicle, other than a truck tractor, by the owner or operator is occasional and merely incidental to the owner's or operator's principal business.

A person is not a chauffeur when the operation is by a volunteer fire fighter operating fire apparatus, or is by a volunteer ambulance or rescue squad attendant operating ambulance or rescue squad apparatus. If a volunteer fire fighter or ambulance or rescue squad operator receives nominal compensation not based upon the value of the services performed, the fire fighter or operator shall be considered to be receiving no compensation and classified as a volunteer.

If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director's designee, an employee of the Iowa department of corrections or a district department of correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees in an automobile.

A farmer or the farmer's hired help is not a chauffeur when operating a truck, other than a truck tractor, owned by the farmer and used exclusively in connection with the transportation of the farmer's own products or property.

44. "*Driver*" means every person who drives or is in actual physical control of a vehicle.

45. "*Peace officer*" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4.

46. "*Local authorities*" mean every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

47. "*Pedestrian*" means any person afoot.

48. "*Street*" or "*highway*" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

49. "*Private road*" or "*driveway*" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

50. "*Roadway*" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

51. "*Sidewalk*" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

52. "*Laned highway*" means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

53. "*Through (or thru) highway*" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a peace officer or traffic-control signal. The term "arterial" is synonymous with "through" or "thru" when applied to highways of this state.

54. "*Intersection*" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

55. "*Crosswalk*" means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

56. "*Safety zone*" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

57. "*Business district*" means the territory contiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

58. "*Residence district*" means the territory within a city contiguous to and including a highway, not comprising a business, suburban or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

59. "*School district*" means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

60. "*Suburban district*" means all other parts of a city not included in the business, school or residence districts.

60A. "*Rural residence district*" means an unincorporated area established by a county board of supervisors which is contiguous to and including a secondary highway, not comprising a business district, where forty percent or more of the frontage of the highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business. For purposes of this subsection, farm houses and farm buildings are not to be considered.

61. The linear measure of the plot of ground upon which the building is located abutting upon the highway shall be deemed "frontage occupied by the building," and the phrase "frontage on such highway for a distance of three hundred feet or more" shall mean the total frontage on both sides of the highway for such distance.

62. "*Official traffic-control devices*" mean all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

63. "*Official traffic-control signal*" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

64. "*Railroad sign*" or "*signal*" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

65. "*Traffic*" means pedestrians, ridden or herded animals, vehicles, street-cars, and other conveyances either singly or together while using any highway for purposes of travel.

66. "*Right of way*" means the privilege of the immediate use of the highway.

67. "*Alley*" means a thoroughfare laid out, established and platted as such, by constituted authority.

68. a. "*Mobile home*" means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. "*Travel trailer*" means a vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed to permit the vehicle to be used as a place

of human habitation by one or more persons. Said vehicle may be up to eight feet in width and its overall length shall not exceed forty feet. Such vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If any such vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a mobile home regardless of the size limitations herein provided.

c. "*Fifth-wheel travel trailer*" means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

d. "*Motor home*" means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in subparagraphs (1), (4) or (5) of this paragraph, of the following permanently installed systems which meet American national standards institute and national fire protection association standards in effect on the date of manufacture:

- (1) Cooking facilities.
- (2) Ice box or mechanical refrigerator.
- (3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
- (4) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
- (5) Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.

(6) A one hundred ten—one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

69. "*Tandem axle*" means any two or more consecutive axles whose centers are more than forty inches but not more than ninety-six inches apart.

70. "*Guaranteed arrest bond certificate*" means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which said certificate is signed by such member or insured and contains a printed statement that such automobile club, association or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed two hundred dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, then it may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

71. A "*special truck*" means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming to transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in the owner's own farming operation or occasional use for charitable purposes. A "*special truck*" does not include a truck tractor operated more than seventy-five hundred miles annually.

72. "*Component part*" means any part of a vehicle, other than a tire, having a component part number.

73. "*Component part number*" means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part

by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

74. "*Vehicle identification number*" or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

75. "*Demolisher*" means any agency or person whose business is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck or dismantle vehicles.

76. "*Multipurpose vehicle*" means a motor vehicle designed to carry not more than ten people, and constructed either on a truck chassis or with special features for occasional off-road operation.

77. "*Motor vehicle license*" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to operator, chauffeur, and motorized bicycle licenses and instruction and temporary permits.

78. "*Vehicle rebuilder*" means a person engaged in the business of rebuilding or restoring to operating condition vehicles subject to registration under this chapter, which have been damaged or wrecked.

79. "*Used vehicle parts dealer*" means a person engaged in the business of selling bodies, parts of bodies, frames or component parts of used vehicles subject to registration under this chapter.

80. "*Vehicle salvager*" means a person engaged in the business of scrapping vehicles, dismantling or storing wrecked or damaged vehicles or selling reusable parts of vehicles or storing vehicles not currently registered which vehicles are subject to registration under this chapter.

81. "*Ambulance*" means a motor vehicle which is equipped with life support systems and used to transport sick and injured persons who require emergency medical care to medical facilities.

82. "*Registration year*" means the period of twelve consecutive months beginning on the first day of the month following the month of the birth of the owner of the vehicle for vehicles registered by the county treasurer and the calendar year for vehicles registered by the department or motor trucks and truck tractors with a combined gross weight exceeding five tons which are registered by the county treasurer.

83. "*Remanufactured vehicle*" means every vehicle of a type required to be registered and having a gross vehicle weight rating of at least thirty thousand pounds that has been disassembled, resulting in the total separation of the major integral parts and which has been reassembled with those parts being replaced with new or rebuilt parts. In every instance, a new diesel engine and all new tires shall be installed and shall carry manufacturers' warranties.

Every vehicle shall include, but not be limited to, new or rebuilt component parts consisting of steering gear, clutch, transmission, differential, engine radiator, engine fan hub, engine starter, alternator, air compressor and cab. For purposes of this subsection, "rebuilt" means the replacement of any element of a component part which appears to limit the serviceability of the part. A minimum of twenty thousand dollars shall be expended on each vehicle and the expense must be verifiable by invoices, work orders, or other documentation as required by the department.

The department may establish equipment requirements and a vehicle inspection procedure for remanufactured vehicles. The department may establish a fee for the inspection of remanufactured vehicles not to exceed one hundred dollars for each vehicle inspected.

84. "Alcohol concentration" means the number of grams of alcohol per any of the following:

- a. One hundred milliliters of blood.
- b. Two hundred ten liters of breath.
- c. Sixty-seven milliliters of urine.

85. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

86. "All-terrain vehicle" means a motor vehicle designed to travel on three or more wheels and designed primarily for off-road use but not including farm tractors, construction equipment, forestry vehicles or lawn and grounds maintenance vehicles.

87 Acts, ch 170, §2-4 HF 371; 87 Acts, ch 186, §1, 2 SF 359; 87 Acts, ch 189, §1 SF 29
 1987 amendments to subsections 31, 32 and 43 effective January 1, 1988; 87 Acts, ch 170, §21 HF 371
 Amendment to subsection 69 effective June 3, 1987, applicable to motor vehicles registered on or after that date; 87 Acts, ch 186, §12 SF 359
 Subsection 16, paragraph b amended
 Subsections 31 and 32 stricken and rewritten
 Subsection 39 amended
 Subsection 43, unnumbered paragraph 4 amended
 Subsection 69 amended

321.20 Application for registration and certificate of title.

Except as provided in this chapter, an owner of a vehicle subject to registration shall make application to the county treasurer, of the county of the owner's residence, or if a nonresident to the county treasurer of the county where the primary users of the vehicle are located, or if a lessor of the vehicle pursuant to chapter 321F which vehicle has a gross vehicle weight of less than ten thousand pounds, to the county treasurer of the county of the lessee's residence, for the registration and issuance of a certificate of title for the vehicle upon the appropriate form furnished by the department. However, upon the transfer of ownership, the owner of a vehicle subject to the proportional registration provisions of chapter 326 shall make application for registration and issuance of a certificate of title to either the department or the appropriate county treasurer. The application shall be accompanied by a fee of ten dollars, and shall bear the owner's signature written with pen and ink. A nonresident owner of two or more vehicles subject to registration may make application for registration and issuance of a certificate of title for all vehicles subject to registration to the county treasurer of the county where the primary user of any of the vehicles is located. The owner of a mobile home shall make application for a certificate of title under this section. The application shall contain:

1. The name, social security number if available, bona fide residence and mailing address of the owner or if the owner is a firm, association or corporation, the application shall contain the business address and employer identification number of the owner if available.
2. A description of the vehicle including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the type of motor fuel used, the serial number of the vehicle, manufacturer's identification number, the engine or other number of the vehicle and whether new or used and if a new vehicle the date of sale by the manufacturer or dealer to the person intending to operate such vehicle.
3. Such further information as may reasonably be required by the department.
4. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest. When such application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided in section 321.45.

5. The amount of tax to be paid under section 423.7.

87 Acts, ch 46, §1 SF 316; 87 Acts, ch 108, §1 HF 527

See Code editor's note

Amendment by 87 Acts, ch 108, §1, takes effect January 1, 1988; 87 Acts, ch 108, §11 HF 527
Unnumbered paragraph 1 amended

321.24 Issuance of registration and certificate of title.

Upon receipt of the application for title and payment of the required fees for a motor vehicle, trailer, or semitrailer, the county treasurer or the department shall, when satisfied as to the application's genuineness and regularity, and, in the case of a mobile home, that taxes are not owing under chapter 135D, issue a certificate of title and, except for a mobile home, a registration receipt, and shall file the application, the manufacturer's or importer's certificate, the certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the registration number assigned to the vehicle, the title number assigned to the owner of the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.7, the type of fuel used, and a description of the vehicle as determined by the department, and upon the reverse side a form for notice of transfer of the vehicle.

The county treasurer shall maintain in the county record system information contained on the registration receipt. The information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Copies the department requires shall be sent to the department in the manner and at the time the department directs.

The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner's title, the amount of tax paid pursuant to section 423.7, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described including the nature of the security interest, date of notation, and name and address of the secured party. The certificate shall bear the seal of the county treasurer or of the department, and the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate shall provide space for the signature of the owner. The owner shall sign the certificate of title in the space provided with pen and ink upon its receipt. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a licensed dealer, and for application for a new certificate of title by the transferee as provided in this chapter. However, titles for mobile homes shall not be reassigned by licensed dealers. All certificates of title shall be typewritten or printed by other mechanical means.

The original certificate of title shall be delivered to the owner if no security interest or encumbrance appears on the certificate. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the person holding the first security interest or encumbrance as shown in the certificate.

The county treasurer or the department shall maintain in the county or department records system information contained on the certificate of title. The information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Copies the department requires shall be sent to the department in the manner and at the time the department directs. The department shall designate a uniform system of title numbers to indicate the county of issuance.

A vehicle shall be registered for the registration year. A vehicle registered for the first time in this state shall be registered for the remaining unexpired months of the registration year and pay a registration fee prorated for the remaining unexpired months of the registration year.

If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the county treasurer or department may register the vehicle but shall as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

87 Acts, ch 108, §2 HF 527; 87 Acts, ch 130, §1 HF 494

See Code editor's note

Amendment by 87 Acts, ch 108, §2, takes effect January 1, 1988; 87 Acts, ch 108, §11 HF 527

Unnumbered paragraph 1 amended

321.30 Grounds for refusing registration or title.

The department or the county treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.
2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.
3. That the department or the county treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.
4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.
5. That the required fee has not been paid except as provided in section 321.48.
6. That the required use tax has not been paid.
7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.
8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.
9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.
10. In the case of a mobile home, that taxes are owing under chapter 135D for a previous year.

11. In the case of a mobile home converted from real estate, real estate taxes which are delinquent.

The department or the county treasurer shall also refuse registration of a vehicle if the applicant for registration of the vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant, and for which vehicle the registration was suspended or revoked under section 321.101, subsection 4, until the fees are paid together with any accrued penalties.

87 Acts, ch 108, §3-5 HF 527

1987 amendments take effect January 1, 1988; 87 Acts, ch 108, §11 HF 527

Unnumbered paragraph 1 amended

Subsection 3 amended

Unnumbered paragraph 2 amended

321.34 Plates or validation sticker furnished—retained by owner—special plates.

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle. The registration plates, including special registration plates, shall be assigned to the owner of a vehicle. When the owner of a registered vehicle transfers or assigns ownership of the vehicle to another person, the owner shall remove the registration plates from the vehicle. The owner shall forward the plates to the county treasurer where the vehicle is registered or the owner may have the plates assigned to another vehicle within thirty days after transfer, upon payment of the fees required by law. The owner shall immediately affix registration plates retained by the owner to another vehicle owned or acquired by the owner, providing the owner complies with section 321.46. The department shall adopt rules providing for the assignment of registration plates to the transferee of a vehicle for which a credit is allowed under section 321.46, subsection 6.

2. *Validation stickers.* In lieu of issuing new registration plates each registration year for a vehicle renewing registration, the department may reassign the registration plates previously issued to the vehicle and may adopt and prescribe annual validation stickers indicating payment of registration fees. The department shall issue two validation stickers for each set of registration plates. One sticker shall specify the year of expiration of the registration period. The second sticker shall specify the month of expiration of the registration period and need not be reissued annually. The month of registration shall not be required on registration plates or validation stickers issued for vehicles registered under chapter 326. The stickers shall be displayed only on the rear registration plate, except that the stickers shall be displayed on the front registration plate of a truck-tractor.

The state department of transportation shall promulgate rules to provide for the placement of motor vehicle registration validation stickers on all registration plates issued for the motor vehicle when such validation stickers are issued in lieu of issuing new registration plates under the provisions of this section.

3. *Radio operators plates.* The owner of an automobile, light delivery truck, panel delivery truck, or pickup who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by the person's amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license and the

owner shall thereupon be entitled to the owner's regular registration plates. The county treasurer shall validate special plates in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

4. *Multiyear plates.* In lieu of issuing annual registration plates for trailers and semitrailers, the department may issue multiyear registration plates for a three-year period or a six-year period for trailers and semitrailers licensed under chapter 326 upon payment of the appropriate registration fee. Fees from three-year and six-year payments shall not be reduced or prorated.

5. *Personalized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer or travel trailer registered in this state, personalized registration plates marked with the initials, letters, or a combination of numerals and letters requested by the owner. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word "sample" displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *Handicapped plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who is a handicapped person as defined in section 601E.1, may upon written application to the department, order special registration plates designed by the department bearing the international symbol of accessibility. The special registration plates shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 150, or 150A, written on the physician's stationery, stating the nature of the applicant's handicap and such additional information as required by rules adopted by the department. The application shall be approved by the department and the special registration plates shall be issued to the applicant in exchange for the previous registration plates issued to the person. The fee for the special plates shall be five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. However, the special plates shall not be renewed without the applicant furnishing evidence to the department that the owner of the motor vehicle is still a handicapped or paraplegic person as defined in section 601E.1. The special registration plates shall be surrendered in exchange for regular registration plates when the owner of the motor vehicle no longer qualifies as a handicapped or paraplegic person as defined in section 601E.1.

8. *Prisoner of war plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who was a prisoner of war during the second world war at any time between December 7, 1941 and December 31, 1946, the Korean conflict at any time between June 25, 1950 and January 31, 1955 or the Vietnam conflict at any

time between August 5, 1964 and June 30, 1973, all dates inclusive, may upon written application to the department, order special registration plates designed by the department in co-operation with the adjutant general which plates signify that the applicant was a prisoner of war as defined in this subsection. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department, in consultation with the adjutant general, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The special plates shall contain the letters "POW" and three numerals and are subject to an annual registration fee of fifteen dollars. The department shall validate the special plates in the same manner as regular registration plates are validated under this section.

9. *National guard plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, light delivery truck, panel delivery truck or pickup who is a member of the national guard, as defined in chapter 29A, may upon written application to the department, order special registration plates designed by the department in co-operation with the adjutant general which plates signify that the applicant is a member of the national guard. The application shall be approved by the department, in consultation with the adjutant general, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee. Special registration plates shall be surrendered in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

87 Acts, ch 77, §1 HF 579
Subsection 5, paragraph a amended

321.45 Title must be transferred with vehicle.

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein, such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

For each new mobile home, travel trailer and camping trailer said manufacturer's or importer's certificate shall also contain thereon the exterior length and exterior width of said vehicle not including any area occupied by any hitching device, and the manufacturer's shipping weight.

Completed motor vehicles, other than class "B" motor homes, which are converted, modified or altered shall retain the identity and model year of the original manufacturer of the vehicle. Motor homes and all other motor vehicles manufactured from chassis or incomplete motor vehicles manufactured by another may have the identity and model year assigned by the final manufacturer.

2. No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title issued or assigned to the person for such vehicle or by virtue

of a manufacturer's or importer's certificate delivered to the person for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration except in case of:

a. The perfection of a lien or security interest by notation on the certificate of title as provided in section 321.50, or

b. The perfection of a security interest in new or used vehicles held as inventory for sale as provided in Uniform Commercial Code, chapter 554, Article 9, or

c. A dispute between a buyer and the selling dealer who has failed to deliver or procure the certificate of title as promised, or

d. Except for the purposes of section 321.493. Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

3. Upon the transfer of any registered vehicle, the owner, except as otherwise provided in this chapter, shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, and the owner shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle except as otherwise provided in this chapter. The owner, except as otherwise provided in this chapter, shall also sign the reverse side of the registration card issued for such vehicle indicating the name and address of the transferee and the date of the transfer.

4. Within seven days of the sale and delivery of a mobile home, the dealer making the sale shall certify to the county treasurer of the county where the unit is delivered, the name and address of the purchaser, the point of delivery to the purchaser, and the make, year of manufacture, taxable size, and identification number of the unit. A mobile home dealer, as defined in section 322B.2, shall within fifteen days of acquiring a used mobile home, titled in Iowa, apply for and obtain from the county treasurer of the dealer's county of residence a new certificate of title for the mobile home.

87 Acts, ch 130, §2 HF 494
Subsection 4 amended

321.46 New title and registration upon transfer of ownership—credit.

1. The transferee shall within fifteen calendar days after purchase or transfer apply for and obtain from the county treasurer of the person's residence, or if a nonresident, the county treasurer of the county where the primary users of the vehicle are located or the county where all other vehicles owned by the nonresident are registered, a new registration and a new certificate of title for the vehicle except as provided in section 321.25 or 321.48. The transferee shall present with the application the certificate of title endorsed and assigned by the previous owner and the signed registration card or other evidence of current registration as required by the department. The transferee shall be required to list a motor vehicle license number as part of the application for a registration transfer and a new title. The motor vehicle license number shall not be the social security number of the transferee unless requested by the transferee.

2. Upon filing the application for a new registration and a new title, the applicant shall pay a title fee of ten dollars and a registration fee prorated for the remaining unexpired months of the registration year. However, no title fee shall be charged to a mobile home dealer applying for a certificate of title for a used mobile home, titled in Iowa, as required under section 321.45, subsection 4. The county treasurer, if satisfied of the genuineness and regularity of the application, and in the case of a mobile home, that taxes are not owing under chapter 135D,

and that applicant has complied with all the requirements of this chapter, shall issue a new certificate of title and, except for a mobile home, a registration card to the purchaser or transferee, shall cancel the prior registration for the vehicle, and shall forward the necessary copies to the department on the date of issuance, as prescribed in section 321.24. Mobile homes titled under chapter 448 that have been subject under section 446.18 to a scavenger sale in a county, shall be titled in the county's name, with no fee and the county treasurer shall issue the title.

3. The applicant shall be entitled to a credit for that portion of the registration fee of the vehicle sold, traded, or junked within the state which had not expired prior to the transfer of ownership of the vehicle. The registration fee for the new registration for the vehicle acquired shall be reduced by the amount of the credit. The credit shall be computed on the basis of the number of months remaining in the registration year, rounded to the nearest whole dollar. The credit shall be subject to the following limitations:

a. The credit shall be claimed within thirty days from the date the vehicle for which credit is granted was sold, transferred, or junked. After thirty days, all credits shall be disallowed.

b. Any credit granted to the owner of a vehicle which has been sold, traded, or junked may only be claimed by that person toward the registration fee for another vehicle purchased and the credit may not be sold, transferred, or assigned to any other person.

c. When the amount of the credit is computed to be an amount of less than five dollars, a credit shall be disallowed.

d. To claim a credit for the unexpired registration fee on a junked vehicle, the county treasurer shall disallow any claim for credit unless the owner presents a junking certificate or other evidence as required by the department to the county treasurer.

e. A credit shall not be allowed to any person who is eligible to receive a refund, upon proper application, under section 321.126.

f. The credit shall only be allowed if the owner provides the copy of the registration receipt to the county treasurer.

g. The credit allowed shall not exceed the amount of the registration fee for the vehicle acquired.

h. The credit shall be computed on the unexpired number of months computed from the date of purchase of the vehicle acquired.

4. If the registration fee upon application is delinquent, the applicant shall be required to pay the delinquent fee from the first day the registration fee was due prorated to the month of application for new title.

5. The seller or transferor may file an affidavit on forms prescribed and provided by the department with the county treasurer of the county where the vehicle is registered certifying the sale or transfer of ownership of the vehicle and the assignment and delivery of the certificate of title for the vehicle. Upon receipt of the affidavit the county treasurer shall file the affidavit with the copy of the registration receipt for the vehicle on file in the treasurer's office and on that day the treasurer shall forward copies of the affidavit to the department and to the county treasurer of the county of residence of the purchaser or transferee. Upon filing the affidavit it shall be presumed that the seller or transferor has assigned and delivered the certificate of title for the vehicle.

6. An applicant for a new registration for a vehicle transferred to the applicant by a spouse, parent or child of the applicant, or by operation of law upon inheritance, devise or bequest, from the applicant's spouse, parent or child, or by a former spouse pursuant to a decree of dissolution of marriage, is entitled to a credit to be applied to the registration fee for the transferred vehicle. A credit shall not be allowed unless the vehicle to which the credit applies is registered within the time specified under subsection 1. The credit shall be computed on the basis of the number of unexpired months remaining in the registration year of the

former owner computed from the date the vehicle was transferred, computed to the nearest whole dollar. The credit shall not exceed the amount of the registration fee for the transferred vehicle. When the amount of the credit is computed to be an amount of less than five dollars, the credit shall be disallowed. The credit shall not be sold, transferred, or assigned to any other person.

87 Acts, ch 130, §3 HF 494
Subsection 2 amended

321.46A Change from proportional registration—credit.

An owner changing a vehicle's registration from proportional registration under chapter 326 to registration under this chapter shall be entitled to a credit on the vehicle's registration fees under this chapter. The credit shall be allowed when the owner surrenders to the county treasurer proof of proportional registration provided by the department. The amount of the credit shall be calculated based on the unexpired complete calendar months remaining in the registration year from the date the application is filed with the county treasurer.

87 Acts, ch 108, §6 HF 527
Effective January 1, 1988; 87 Acts, ch 108, §11 HF 527
NEW section

321.49 Time limit—penalty—power of attorney.

1. Except as provided in section 321.52, if an application for transfer of registration and certificate of title is not submitted to the county treasurer of the residence of the transferee within fifteen days of the date of assignment or transfer of title, a penalty of ten dollars shall accrue against the applicant, and no registration card or certificate of title shall be issued to the applicant for the vehicle until the penalty is paid.

2. Certificates of title to vehicles may be assigned by an attorney in fact of the owner under a power of attorney appointed and so empowered on forms provided by the department. Such power of attorney shall be filed by the transferee with the application for title.

3. A mobile home dealer who acquires a used mobile home, titled in Iowa, and who does not apply for and obtain a certificate of title from the county treasurer of the dealer's county of residence within fifteen days of the date of acquisition, as required under section 321.45, subsection 4, is subject to a penalty of ten dollars. A certificate of title shall not be issued to the mobile home dealer until the penalty is paid.

87 Acts, ch 130, §4 HF 494
NEW subsection 3

321.89 Abandoned vehicles.

1. *Definitions.* As used in this section and sections 321.90 and 321.91 unless the context otherwise requires:

a. "Police authority" means the Iowa highway safety patrol or any law enforcement agency of a county or city.

b. "Abandoned vehicle" means any of the following:

(1) A vehicle that has been left unattended on public property for more than forty-eight hours and lacks current registration plates or two or more wheels or other parts which renders the vehicle totally inoperable, or

(2) A vehicle that has remained illegally on public property for more than seventy-two hours, or

(3) A vehicle that has been unlawfully parked on private property or has been placed on private property without the consent of the owner or person in control of the property for more than twenty-four hours, or

(4) A vehicle that has been legally impounded by order of a police authority and has not been reclaimed for a period of ten days, or

(5) Any vehicle parked on the highway determined by a police authority to create a hazard to other vehicle traffic.

However, a vehicle shall not be considered abandoned for a period of five days if its owner or operator is unable to move the vehicle and notifies the police authority responsible for the geographical location of the vehicle and requests assistance in the removal of the vehicle.

c. "Demolisher" means any city or public agency organized for the disposal of solid waste, or any person whose business it is to convert a vehicle to junk, processed scrap or scrap metal, or otherwise to wreck, or dismantle vehicles.

2. *Authority to take possession of abandoned vehicles.* A police authority may, and on the request of any other authority having the duties of control of highways or traffic, shall take into custody any abandoned vehicle on public property and may take into custody any abandoned vehicle on private property. A police authority taking into custody an abandoned vehicle determined to create a traffic hazard shall report the reasons constituting the hazard in writing to the appropriate authority having duties of control of the highway. The police authority may employ its own personnel, equipment and facilities or hire other personnel, equipment and facilities for the purpose of removing, preserving, storing, or disposing abandoned vehicles.

3. *Notification of owner, lienholders, and other claimants.*

a. A police authority which takes into custody an abandoned vehicle shall notify, within twenty days, by certified mail, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to their last known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall describe the year, make, model, and serial number of the vehicle, describe the personal property found in the vehicle, set forth the location of the facility where the vehicle is being held, and inform the persons receiving the notice of their right to reclaim the vehicle and personal property within twenty-one days after the effective date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody and upon payment of the costs of notice required pursuant to this subsection. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title, claim and interest in the vehicle and that failure to reclaim the vehicle is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher. The notice shall state that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or property by the police authority or of the assessment of fees and charges provided by this section may ask for an evidentiary hearing before the police authority to contest those matters. If the persons receiving the notice do not ask for a hearing or exercise their right to reclaim the vehicle within the twenty-one-day reclaiming period, the owner and lienholders shall no longer have any right, title, claim, or interest in or to the vehicle. No court in any case in law or equity shall recognize any right, title, claim, or interest of the owner and lienholders after the expiration of the twenty-one-day reclaiming period.

b. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet all requirements of notice under this section. The published notice may contain multiple listings of abandoned vehicles but shall be published within the same time requirements and contain the same information as prescribed for mailed notice in subsection 3, paragraph "a" of this section.

c. The owner or any lienholders may, by written request delivered to the police authority prior to the expiration of the twenty-one-day reclaiming period, obtain an additional fourteen days within which the vehicle may be reclaimed.

4. *Auction of abandoned vehicles.* If an abandoned vehicle has not been reclaimed as provided for in subsection 3, the police authority shall make a determination as to whether or not the vehicle shall be sold for use upon the highways. If the vehicle is not sold for use upon the highways, it shall be sold for junk, or demolished and sold as scrap. The police authority shall sell the vehicle at public auction. Notwithstanding any other provision of this section, any police authority, which has taken into possession any abandoned vehicle which lacks an engine or two or more wheels or another part which renders the vehicle totally inoperable may dispose of the vehicle to a demolisher for junk after complying with the notification procedures enumerated in subsection 3 and without public auction. The purchaser of the vehicle takes title free and clear of all liens and claims of ownership, shall receive a sales receipt from the police authority, and is entitled to register the vehicle and receive a certificate of title if sold for use upon the highways. However, if the vehicle is sold or disposed of to a demolisher for junk, the sales receipt by itself is sufficient title only for purposes of transferring the vehicle to the demolisher for demolition, wrecking, or dismantling and, when so transferred, no further titling of the vehicle is permitted. From the proceeds of the sale of an abandoned vehicle the police authority shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing which resulted from placing the abandoned vehicle in custody, all notice and publication costs incurred pursuant to subsection 3, the cost of inspection, and any other costs incurred except costs of bookkeeping and other administrative costs. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and shall then be deposited in the road use tax fund. The costs to police authorities of auction, towing, preserving, storage, and all notice and publication costs, and all other costs which result from placing abandoned vehicles in custody, whenever the proceeds from a sale of the abandoned vehicles are insufficient to meet these expenses and costs, shall be paid from the road use tax fund.

The director of revenue and finance shall establish by rule a claims procedure to be followed by police authorities in obtaining expenses and costs from the fund.

87 Acts, ch 123, §1 HF 262

Subsection 1, paragraph b, unnumbered paragraph 2 amended

321.104 Penal offenses against title law.

It is a misdemeanor, punishable as provided in section 321.482 for any person to commit any of the following acts:

1. To operate any motor vehicle upon the highways upon which the certificate of title has been canceled, or while a certificate of registration of a motor vehicle is suspended or revoked.

2. For a dealer, or a person acting on behalf of a dealer to acquire, purchase, hold or display for sale a motor vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title, or assignments thereof, unless otherwise provided in this chapter.

3. To fail to surrender a certificate of title, registration card, or registration plates upon cancellation, suspension, or revocation of the certificate or registration by the department and notice as prescribed in this chapter.

4. To purport to sell or transfer a motor vehicle, trailer, or semitrailer without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate duly assigned to the purchaser or transferee as provided in this chapter.

5. To violate any of the other provisions of this chapter or any lawful rules adopted pursuant to this chapter.

6. For a dealer to sell or transfer a mobile home without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's certificate properly assigned to the purchaser, or to transfer a mobile home without disclosing to the purchaser the owner of the mobile home in a manner prescribed by the department pursuant to rules, or to fail to certify within seven days to the proper county treasurer the information required under section 321.45, subsection 4, or to fail to apply for and obtain a certificate of title for a used mobile home, titled in Iowa, acquired by the dealer within fifteen days from the date of acquisition as required under section 321.45, subsection 4.

87 Acts, ch 130, §5 HF 494
Subsection 6 amended

321.126 Refunds of fees.

Refunds of unexpired vehicle registration fees shall be allowed in accordance with this section, except that no refund shall be allowed and paid if the unused portion of the fee is less than five dollars. Subsections 1 and 2 do not apply to motor vehicles registered by the county treasurer. The refunds shall be made as follows:

1. If the motor vehicle is destroyed by fire or accident, or junked and its identity as a motor vehicle entirely eliminated, the owner in whose name the motor vehicle was registered at the time of destruction or dismantling shall return the plates to the department and within thirty days thereafter make a statement of such destruction or dismantling and make claim for refund. With reference to the destruction or dismantling of a vehicle, no refund shall be allowed unless a junking certificate has been issued, as provided in section 321.52.

2. If the motor vehicle is stolen, the owner shall give notice of the theft to the department within five days. If the motor vehicle is not recovered by the owner thirty days prior to the end of the current registration year, the owner shall make a statement of the theft and make claim for refund.

3. If the motor vehicle is placed in storage by the owner upon the owner's entry into the military service of the United States, the owner shall return the plates to the county treasurer or the department and make a statement regarding the storage and military service and make claim for refund. Whenever the owner of a motor vehicle so placed in storage desires to again register the vehicle, the county treasurer or department shall compute and collect the fees for registration for the registration year commencing in the month the vehicle is removed from storage.

4. If the motor vehicle is registered by the county treasurer during the current registration year and the owner or lessee registers the vehicle for proportional registration under chapter 326, the owner of the registered vehicle shall surrender the registration plates to the county treasurer and may file a claim for refund. In lieu of a refund, a credit for the registration fees paid to the county treasurer may be applied by the department to the owner or lessee's proportional registration fees upon the surrender of the county plates and registration.

5. A refund for trailers and semitrailers issued a multiyear registration plate shall be paid by the department upon application.

6. If a vehicle is sold or junked within thirty days after a replacement vehicle has been purchased and the title and registration for the replacement vehicle issued, the owner in whose name the vehicle was registered may within thirty days after the date of sale or junking make claim to the department for a refund of the sold or junked vehicle's registration fee subject to the following limitations:

a. The refund shall be computed on the basis of the number of unexpired months remaining in the registration year at the time the vehicle was sold or junked and shall be rounded to the nearest whole dollar. Section 321.127, subsection 1, does not apply.

b. The refund shall not exceed the amount of the registration fee for the replacement vehicle and shall only be allowed if the replacement vehicle was registered within the time specified for registration under section 321.46, subsection 1.

c. The refund shall only be allowed if the owner provides the credit copy of the registration receipt for the vehicle sold or junked and a photocopy of the registration receipt for the replacement vehicle.

d. This subsection does not apply to vehicles registered under chapter 326.

7. Notwithstanding any provision of this section to the contrary, there shall be no refund of proportional registration fees unless the state which issued the base plate for the vehicle allows such refund. If an owner subject to proportional registration leases the vehicle for which the refund is sought, the claim shall be filed in the names of both the lessee and the lessor and the refund payment made payable to both the lessor and the lessee. The term "owner" for purposes of this section shall include a person in whom is vested right of possession or control of a vehicle which is subject to a lease, contract, or other legal arrangement vesting right of possession or control in addition to the term as defined in section 321.1, subsection 36.

87 Acts, ch 108, §7 HF 527

Amendment to subsection 4 takes effect January 1, 1988; 87 Acts, ch 108, §11 HF 527

Subsection 4 amended

321.127 Payment of refund.

1. The refund of the registration fee for motor vehicles shall be computed on the basis of the number of unexpired months remaining in the registration year from date of filing of the claim for refund with the county treasurer, computed to the nearest dollar.

2. The department, unless reasonable grounds exist for delay, shall make refund on or before the last day of the month following the month in which the claim is filed with the department.

3. For trailers or semitrailers issued a multiyear registration plate a refund shall be paid equal to the annual fee for twelve months times the remaining number of complete registration years.

4. Refunds and credits for motor vehicles registered for proportional registration under chapter 326 shall be paid or credited on the basis of unexpired complete calendar months remaining in the registration year from the date the claim or application is filed with the department.

87 Acts, ch 108, §8 HF 527

Amendment to subsection 4 takes effect January 1, 1988; 87 Acts, ch 108, §11 HF 527

Subsection 4 amended

321.179 Special restrictions on chauffeurs. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

321.189 Licenses—operator's, motorized bicycle, chauffeur's.

1. *Motor vehicle license.* Upon the payment of the required fee, the department shall issue to every qualifying applicant an operator's license, motorized bicycle license or chauffeur's license, as applied for. Appearing on this license shall be a distinguishing number assigned to the licensee; the licensee's full name, date of birth, sex, residence address; a colored photograph; a brief description of the licensee; and the usual signature of the licensee. If prior to the renewal date, a person desires to obtain an operator's or chauffeur's license in the form authorized by this section, such license may be issued as a voluntary replacement upon payment of the required fee. The number of places where licenses are available shall not be reduced because of procedures or equipment required in placing colored photographs on licenses or permits. The department shall provide a space on every license where the licensee may affix a decal or sticker indicating that the

licensee is a donor under the uniform anatomical gift Act and shall provide a space where the licensee may affix a symbol indicating the presence of a medical condition. The license may contain such other information as the department may by rule require. No license shall be valid unless it bears the usual signature of the licensee. The department shall advise an applicant that the applicant may request a number other than a social security number as the motor vehicle license number. The department shall not retain a positive or negative photograph of the licensee. The licensee may affix a decal or sticker on the license in the space provided which indicates that the licensee is a donor under the uniform anatomical gift Act. The decal shall not be larger than one-half inch in diameter. The use of the decal or sticker on the license shall be authorized only if the licensee has complied with the provisions for making a gift under the uniform anatomical gift Act and shall be effective only if the licensee carries on or about the licensee's person a duly signed and executed donor card as authorized by the uniform anatomical gift Act.

A motor vehicle license or a nonoperator's identification card issued to a person under twenty-one years of age shall be identical in form to any other motor vehicle license or nonoperator's identification card issued to any other person, except that the photograph appearing on the face of the license or card shall be a side profile of the applicant. Upon attaining the age of twenty-one, and upon the payment of a one dollar fee, the person shall be entitled to a new motor vehicle license or nonoperator's identification card for the unexpired months of the motor vehicle license or the nonoperator's identification card. This paragraph is effective for licenses or cards issued after July 1, 1987, to persons born after September 1, 1967.

After January 1, 1982, a person under the age of eighteen applying for a motor vehicle license valid for the operation of a motorcycle shall be required to successfully complete a motorcycle education course approved and established by the department of education or successfully complete an approved motorcycle education course at a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction minus moneys received by the school district under section 321.189, subsection 3.

2. Motorized bicycle license.

a. The department may issue a motorized bicycle license to a person fourteen years of age or older who has passed a vision test and a written examination on the rules of the road. After January 1, 1982, persons under the age of sixteen applying for a motorized bicycle license shall also be required to successfully complete a motorized bicycle education course approved and established by the department of education or successfully complete an approved motorized bicycle education course at a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction. A motorized bicycle license entitles the licensee to operate a motorized bicycle upon the highway while having the license in the licensee's immediate possession. The license is valid for a period of two years, subject to termination or cancellation as provided in this section.

b. A motorized bicycle license shall be canceled upon a conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation. The cancellation of the license upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of a person's operator's license.

c. As used in this section, "moving traffic violation" does not include a parking violation as defined in section 321.210 or a violation of a section of the Code or municipal ordinance pertaining to standards to be maintained for motor vehicle

equipment except sections 321.430 and 321.431, or except a municipal ordinance pertaining to motor vehicle brake requirements as applicable to motorized bicycles.

d. A motorized bicycle license is not required to operate a motorized bicycle if the operator possesses a valid operator's or chauffeur's license.

e. A motorized bicycle license shall terminate upon issuance to the licensee of an operator's or chauffeur's license. A valid motorized bicycle license shall be returned to the department prior to issuance of an operator's or chauffeur's license.

3. *Motorcycle rider education fund.* The motorcycle rider education fund is established in the office of the treasurer of state. The moneys credited to the fund are appropriated to the department of education to be used to establish new motorcycle rider education courses and reimburse sponsors of motorcycle rider education courses for the costs of providing motorcycle education courses approved and established by the department of education. The department of education shall adopt rules under chapter 17A providing for the distribution of moneys to sponsors of motorcycle rider education courses based upon the costs of providing the education courses.

87 Acts, ch 167, §1 HF 167; 87 Acts, ch 206, §2, 3 SF 399

Fee, §321.191

If 23 U.S.C. §158 is declared unconstitutional by the appellate court of the eighth circuit or by the supreme court of the United States, or if 23 U.S.C. §158 is repealed by the United States congress or otherwise invalidated, the 1987 amendment to subsection 1, unnumbered paragraph 2 is repealed and section 321.189, subsection 1, unnumbered paragraph 2, Code 1987, is reenacted to read as it did prior to July 1, 1987; 87 Acts, ch 167, §7 HF 167

Subsection 1, unnumbered paragraph 2 amended

Subsection 1, unnumbered paragraph 3 amended

NEW subsection 3

321.191 Fee.

The fee for an operator's license shall be eight dollars if issued for a period of two years, and sixteen dollars if issued for a period of four years. If a motor vehicle license issued is valid for the operation of a motorcycle, an additional fee of one dollar per year of license validity shall be charged. The fee for a chauffeur's license shall be fifteen dollars if issued for a period of two years, and thirty dollars if issued for a period of four years. The fee for a temporary instruction permit shall be six dollars, for a chauffeur's instruction permit, twelve dollars, for a school license, ten dollars, for a restricted license issued under section 321.178, subsection 2, ten dollars and for a motorized bicycle license, ten dollars.

There shall be a fee of twenty dollars for reinstatement of a chauffeur's license or operator's license which is, after notice and opportunity for hearing, suspended or revoked pursuant to sections 321.193, 321.209 and 321.210, except subsection 4 thereof, 321.513, 321.560, 321A.6, and chapter 321J. The twenty-dollar fee shall be collected only if the person whose license was suspended or revoked was served personally with notice. If the person whose license was suspended or revoked was served notice by certified mail, the reinstatement fee shall be ten dollars.

87 Acts, ch 167, §2 HF 167; 87 Acts, ch 206, §4 SF 399

See Code editor's note to §135.11

Unnumbered paragraph 1 amended

321.196 Expiration of operator's license—renewal— vision test mandatory.

Except as otherwise provided, an operator's license expires, at the option of the applicant, two or four years from the licensee's birthday anniversary occurring in the year of issuance if the licensee is between the ages of eighteen and seventy years on the date of issuance of the license, otherwise the license is effective for a period of two years. The license is renewable without written examination or penalty within a period of thirty days after its expiration date. A person shall not be considered to be driving with an invalid license during a period of thirty days following the license expiration date. However, for a license renewed within the thirty-day period, the date of issuance shall be considered to be the previous

birthday anniversary on which it expired. Applicants whose licenses are restricted due to vision or other physical deficiencies may be required to renew their licenses every two years. For the purposes of this section the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. All applications for renewal of operators' licenses shall be made under the direct supervision of a uniformed member of the department and shall be approved by the uniformed member. The department in its discretion may authorize the renewal of a valid license upon application without an examination provided that the applicant satisfactorily passes a vision test as prescribed by the department.

Any resident of Iowa holding a valid operator's or chauffeur's license who is temporarily absent from the state, or incapacitated, may, at the time for renewal for such license, obtain from the sheriff of the county of the licensee's residence a form to apply for a temporary extension of the license. The department upon receipt of such application form properly filled out shall, upon a showing of good cause, issue a temporary extension of such license for not to exceed six months. The department shall prescribe and furnish such forms to each county sheriff.

Prior to the renewal of a license pursuant to this section, the department shall issue to each applicant information on the law relating to the operation of a motor vehicle while intoxicated and statistical information relating to the number of injuries and fatalities occurring as a result of the operation of motor vehicles while intoxicated.

87 Acts, ch 167, §3 HF 167

Unnumbered paragraph 1 amended

321.197 Expiration of chauffeur's license.

Except as otherwise provided, every chauffeur's license shall expire, at the option of the applicant, two or four years from the licensee's birthday anniversary occurring in the year of issuance. A chauffeur's license may be renewed within thirty days after the applicant's license expiration date without written examination or penalty. A person shall not be considered to be driving with an invalid license during a period of thirty days following the license expiration date. For any license renewed within the thirty-day period, the date of issuance shall be considered to be the previous birthday anniversary on which it expired. However, if the licensee is seventy years of age or older on the date of issuance of the license, the license shall be issued to be valid for two years. For the purposes of this section the birthday anniversary of a person born on February 29 shall be deemed to occur on March 1. The department in its discretion may waive the examination of any applicant previously licensed as a chauffeur under this chapter, provided that the person satisfactorily passes a vision test as prescribed by the department. An application for the renewal of a chauffeur's license shall be made under the direct supervision of a uniformed member of the department and shall be approved by the uniformed member.

87 Acts, ch 167, §4 HF 167

Section amended

321.198 Military service exception.

The effective date of a valid operator's license and of a valid chauffeur's license to the extent that it permits the operation of a motor vehicle as an operator, issued under the laws of this state, held by any person at the time of entering the military service of the United States or of the state of Iowa notwithstanding the expiration of such license according to its terms, is hereby extended without fee until six months following the initial separation from active duty of such person from the military service, provided such person is not suffering from such physical disabilities as to impair the person's competency as an operator and provided further that such licensee shall upon demand of any peace officer furnish satisfactory evidence of the person's military service. However, no person entitled to the benefits of this section, charged with operating a motor vehicle without an

operator's license, shall be convicted if the person produces in court, within a reasonable time, a valid operator's or chauffeur's license theretofore issued to that person along with evidence of the person's military service as above mentioned.

The department is authorized to renew any motor vehicle license falling within the provisions and limitations of the preceding paragraph, without examination, upon application and payment of fee made within six months following separation from the military service.

The provisions of this section shall also apply to the spouse and children or ward of such military personnel when such spouse, children or ward are living with the above described military personnel outside of the state of Iowa and provided that such extension of license does not exceed five years.

87 Acts, ch 167, §5 HF 167; 87 Acts, ch 170, §5 HF 371

See Code editor's note

Unnumbered paragraph 2 amended

321.210 Authority to suspend—point system—temporary restricted license.

The department is hereby authorized to establish rules under the provisions of chapter 17A providing for the suspension of the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that under the rules adopted by the department the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction.
2. Is an habitually reckless or negligent driver of a motor vehicle.
3. Is an habitual violator of the traffic laws.
4. Is physically or mentally incapable of safely operating a motor vehicle.
5. Has permitted an unlawful or fraudulent use of the license.
6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation.
7. Has committed a serious violation of the motor vehicle laws of this state.
8. Is subject to a license suspension under section 321.513.

For the purpose of determining when to suspend a license under this section the director may, in accordance with the provisions of chapter 17A, promulgate a point system for the purpose of weighing traffic convictions, or offenses by their seriousness and may change such weighted scale from time to time as experience or the accident frequency in the state makes necessary or desirable.

Prior to a suspension taking effect under subsection 2, 3, 4, 5 or 7, the licensee shall have received twenty days' advance notice of the effective date of the suspension. Notwithstanding the terms of the Iowa administrative procedure Act, the filing of a petition for judicial review shall operate to stay the suspension pending the determination by the district court.

If the department assesses any points against an operator or chauffeur of a motor vehicle under any point system devised by the department for the purpose of suspending operators' or chauffeurs' licenses, the licensee shall receive a credit of one point for each year in which the licensee had in continuous effect a valid operator's or chauffeur's license and during which no points were assessed against such licensee, but such credit of points shall not exceed five points at any one time. Credit points shall be subtracted from the total points assessed against the licensee in determining when to suspend a license.

If the department assesses any points against an operator or chauffeur of a motor vehicle under any point system devised by the department for the purpose of suspending operators' or chauffeurs' licenses, the department must notify the licensee by ordinary mail that such points have been assessed and the reason therefor. Such notice shall also contain a reference to all Code sections under which the person's motor vehicle license may be suspended, revoked, canceled or denied. Provided that no license shall be suspended on the basis of any point system devised by the department without notice of proposed suspension to the

licensee and a reasonable opportunity for a preliminary hearing before a member of the department who shall have authority in meritorious cases to revoke the suspension.

However, a warning memorandum, summons, conviction or forfeiture of bail not vacated, for a violation of any section of the Code or any municipal ordinance pertaining to the standards to be maintained for motor vehicle equipment, except section 321.430 or 321.431 or any municipal ordinance pertaining to motor vehicle brake requirements, shall not be taken into consideration in determining suspension or the length of suspension of an operator's or chauffeur's license. A violation of section 321.430 or 321.431 or any municipal ordinance pertaining to motor vehicle brake requirements shall not be taken into consideration in determining suspension or the length of suspension of an operator's or chauffeur's license if the equipment in violation of the Code or municipal ordinance has been repaired within seventy-two hours of such warning memorandum, summons, conviction, or forfeiture of bail not vacated, and evidence of such repair has immediately been sent to the director.

The department shall not consider nor assess points for violations of section 321.445 in determining a motor vehicle license suspension, revocation or cancellation.

The department shall not consider or assess any points for violations of section 321.446, in determining a license suspension under this section.

The department shall not consider or assess points for a parking violation in determining a license suspension under this section and a parking violation is not a moving traffic violation. For purposes of this section, a "parking violation" means a violation of a parking ordinance by local authorities, a violation of section 601E.6, section 321.366, subsection 6, or sections 321.354 through 321.361 except section 321.354, subsection 1.

The department shall not consider or assess any points for speeding violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour in determining a license suspension under this section. This paragraph shall apply to only the first two such violations which occur within any twelve-month period.

The department may, on application, issue a temporary restricted license to a person, whose motor vehicle license is suspended, canceled, or revoked under this chapter, allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment; continuing health care or the continuing health care of another who is dependent upon the person; continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion; substance abuse treatment; or court-ordered community service responsibilities. However, a temporary restricted license shall not be issued to a person whose license is revoked under section 321.209, subsections 1 through 5. A temporary restricted license may be issued to a person whose license is revoked under section 321.209, subsection 6, only if the person has no previous drag racing convictions. A person

holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

87 Acts, ch 120, §1 SF 311; 87 Acts, ch 167, §6 HF 167
Amendment effective May 12, 1987
Unnumbered paragraph 10 amended
Unnumbered paragraph 11 stricken and rewritten

321.225 Maximum mechanical operation. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

321.226 Maximum operation by employee. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

321.227 Violations. Repealed by 87 Acts, ch 170, §20. HF 371 See §805.8(2o).

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

321.266 Reporting accidents.

1. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall immediately by the quickest means of communication give notice of such accident to the sheriff of the county in which said accident occurred, or the nearest office of the Iowa highway safety patrol, or to any other peace officer as near as practicable to the place where the accident occurred.

2. The driver of a vehicle involved in an accident resulting in injury to or death of any person, or total property damage to an apparent extent of five hundred dollars or more shall also, within seventy-two hours after the accident, forward a written report of the accident to the department.

3. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in subsections 1 to 3 of this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the department.

4. Notwithstanding section 455B.386, a carrier transporting hazardous material upon a public highway in this state, in the case of an accident involving the transportation of the hazardous material, shall immediately notify the police radio broadcasting system established pursuant to section 693.1 or shall notify a peace officer of the county or city in which the accident occurs. When a local law enforcement agency is informed of the accident, the agency shall notify the Iowa highway safety patrol. A person who violates a provision of this subsection is guilty of a serious misdemeanor.

87 Acts, ch 170, §6 HF 371
1987 amendment to subsection 4 effective January 1, 1988; 87 Acts, ch 170, §21 Hf 371
Subsection 4 amended

321.285 Speed restrictions.

Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit the person to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said highway will observe the law.

The following shall be the lawful speed except as hereinbefore or hereinafter modified, and any speed in excess thereof shall be unlawful:

1. Twenty miles per hour in any business district.
2. Twenty-five miles per hour in any residence or school district.

3. Forty miles per hour for any motor vehicle drawing another vehicle, except as hereinafter specified.

4. Forty-five miles per hour in any suburban district. Each school district as defined in subsection 59 of section 321.1 shall be marked by distinctive signs as provided by the current manual of uniform traffic control devices adopted by the department and placed on the highway at the limits of such school district.

5. Fifty-five miles per hour from sunset to sunrise and fifty-five miles per hour from sunrise to sunset.

6. Fifty-five miles per hour for any motor vehicle drawing a one- or two-wheel trailer or a tandem wheel trailer not more than thirty-two feet in length including towing arm and not more than eight feet in width.

7. Reasonable and proper, but not greater than fifty-five miles per hour at any time between sunrise and sunset, and not greater than fifty miles per hour at any time between sunset and sunrise, on secondary roads unless such roads are surfaced with concrete or asphalt or a combination of both, in which case the speed limits shall be the same as provided in subsection 5 of this section. Whenever the board of supervisors of any county shall determine upon the basis of an engineering and traffic investigation conducted by the department when so requested by said board that the speed limit on any secondary road is greater than is reasonable and proper under the conditions found to exist at any intersection or other place or upon any part of a secondary road, said board shall determine and declare a reasonable and proper speed limit thereat. Such speed limits as determined by the board of supervisors shall be effective when appropriate signs giving notice thereof are erected by the board of supervisors at such intersection or other place or part of the highway.

8. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic, except vehicles subject to the provisions of section 321.286 on fully controlled-access, divided, multilaned highways including the national system of interstate highways designated by the federal highway administration and this state (23 U.S.C. sec. 103 (e)) is sixty-five miles per hour. However, the department or cities with the approval of the department may establish a lower speed limit upon such highways located within the corporate limits of a city and used as city alternate routes, commonly referred to as "freeways." For the purposes of this subsection a fully controlled-access highway is a highway that gives preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections. A minimum speed of forty miles per hour, road conditions permitting, is established on the highways referred to in this subsection.

It is further provided that any kind of vehicle, implement, or conveyance incapable of attaining and maintaining a speed of forty miles per hour shall be prohibited from using the interstate system.

87 Acts, ch 120, §2 SF 311

1987 amendment applies only to extent permissible under 23 U.S.C. §145; 87 Acts, ch 120, §11 SF 311

Amendment effective May 12, 1987

Subsection 8, unnumbered paragraph 1 amended

321.286 Truck speed limits.

It shall be unlawful for the driver of a freight-carrying vehicle, with a gross weight of over five thousand pounds, to drive the same at a speed exceeding the following:

1. Sixty-five miles per hour on all fully controlled-access, divided, multilaned highways including interstate highways.
2. Fifty-five miles per hour on all primary roads.
3. Fifty miles per hour on all secondary roads.

For the purposes of this section, interstate highways are those designated by the federal highway administration and this state, and primary and secondary roads are those designated by the federal highway administration and this state.

87 Acts, ch 120, §3 SF 311

1987 amendment applies only to extent permissible under 23 U.S.C. §145; 87 Acts, ch 120, §11 SF 311

Subsection 1 amended

321.287 Bus speed limits.

A passenger-carrying motor vehicle used as a common carrier shall not be driven upon the highways at a speed in excess of the posted maximum speed limit. A school bus shall not be operated in violation of section 321.377.

87 Acts, ch 120, §4 SF 311

Amendment effective May 12, 1987

Section amended

321.288 Control of vehicle—reduced speed.

1. A person operating a motor vehicle shall have the vehicle under control at all times.

2. A person operating a motor vehicle shall reduce the speed to a reasonable and proper rate:

a. When approaching and passing a person walking in the traveled portion of the public highway.

b. When approaching and passing an animal which is being led, ridden, or driven upon a public highway.

c. When approaching and traversing a crossing or intersection of public highways, or a bridge, sharp turn, curve, or steep descent, in a public highway.

d. When approaching and passing an emergency warning device displayed in accordance with rules adopted under section 321.449, or an emergency vehicle displaying a revolving or flashing light.

e. When approaching and passing a slow moving vehicle displaying a reflective device as provided by section 321.383.

f. When approaching, and passing through a sign posted construction or maintenance zone upon the public highway.

87 Acts, ch 170, §7 HF 371

1987 amendment to subsection 2, paragraph d effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

Subsection 2, paragraph d amended

321.317 Signals by hand and arm or signal device.

1. The signals required under the provisions of this chapter may be given either by means of the hand and arm as provided in section 321.318, or by a mechanical or electrical directional signal device or light of a type approved by the department and conforming to the provisions of this chapter relating thereto.

2. Directional signal devices shall be designed with a white, yellow or amber lamp or lamps to be displayed on the front of vehicles and with a lamp or lamps of red, yellow or amber to be displayed on the rear of vehicles. Such devices shall be capable of clearly indicating any intention to turn either to the right or to the left and shall be visible and understandable during both daylight and darkness from a distance of at least one hundred feet from the front and rear of a vehicle equipped therewith.

3. It is unlawful for any person to sell or offer for sale or operate on the highways of the state any vehicle subject to registration under the provisions of this chapter which has never been registered in this or any other state prior to January 1, 1954, unless the vehicle is equipped with a directional signal device of a type approved by the department and is in compliance with the provisions of subsection 2 of this section. Motorcycles, motorized bicycles and semitrailers and trailers less than forty inches in width are exempt from the provisions of this section.

4. When a vehicle is equipped with a directional signal device, such device shall at all times be maintained in good working condition. No directional signal

device shall project a glaring or dazzling light. All directional signal devices shall be self-illuminated when in use while other lamps on the vehicle are lighted.

5. Whenever any vehicle or combination of vehicles is disabled or for other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing, the operator then may display on the vehicle or combination of vehicles four directional signals of a type complying with the provisions of this section relating to directional signal devices in simultaneous operation.

87 Acts, ch 170, §8 HF 371

1987 amendment to subsection 5 effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

Subsection 5 amended

321.341 Obedience to signal of train.

When a person driving a vehicle approaches a railroad grade crossing and warning is given by automatic signal, crossing gates, a flag person, or otherwise of the immediate approach of a train, the driver of the vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail and shall not proceed until the driver can do so safely.

The driver of a vehicle shall stop and remain standing and not traverse such a grade crossing when a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a train.

87 Acts, ch 170, §9 HF 371

1987 amendment effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

Unnumbered paragraph 1 amended

321.343 Certain vehicles must stop.

The driver of a motor vehicle carrying passengers for hire, a school bus, or a vehicle carrying hazardous material and required to stop before crossing a railroad tract by motor carrier safety rules adopted under section 321.449, before crossing at grade any track of a railroad, shall stop the vehicle within fifty feet but not less than fifteen feet from the nearest rail. While stopped, the driver shall listen and look in both directions for an approaching train, and for signals indicating the approach of a train, and shall not proceed until the driver can do so safely.

No stop need be made at a crossing where a peace officer or a traffic-control device directs traffic to proceed. No stop need be made at a crossing designated by an "exempt" sign. An "exempt" sign shall be posted only where the tracks have been partially removed on either side of the roadway.

87 Acts, ch 170, §10 HF 371

1987 amendment effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

Unnumbered paragraph 1 amended

321.364 Preventing contamination of food by hazardous material.

Food intended for human consumption shall not be shipped in a vehicle or container which has been used to transport a hazardous material unless the vehicle or container has been purged of any hazardous material or the transportation is made in a manner that prevents any contact between the food and the hazardous material.

87 Acts, ch 170, §11 HF 371

Effective January 1, 1987; 87 Acts, ch 170, §21 HF 371

Section stricken and rewritten

321.365 Coasting prohibited.

The driver of a motor vehicle shall not drive with the source of motive power disengaged from the driving wheels except when disengagement is necessary to stop or to shift gears.

87 Acts, ch 170, §12 HF 371

1987 amendment effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

Section stricken and rewritten

321.383 Exceptions—slow vehicles identified.

1. This chapter with respect to equipment on vehicles does not apply to implements of husbandry, road machinery, bulk spreaders and other fertilizer and

chemical equipment defined as special mobile equipment, road rollers, or farm tractors except as made applicable in this section. However, the movement of implements of husbandry between the retail seller and a farm purchaser or from farm site to farm site or the movement of indivisible implements of husbandry between the place of manufacture and a retail seller or farm purchaser under section 321.453 is subject to safety rules adopted by the department. The safety rules shall prohibit the movement of any power unit towing more than one implement of husbandry from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

2. When operated on a highway in this state at a speed of twenty-five miles per hour or less, every farm tractor, or tractor with towed equipment, self-propelled implement of husbandry, road construction or maintenance vehicle, road grader, horse-drawn vehicle, or any other vehicle principally designed for use off the highway and any such tractor, implement, vehicle or grader when manufactured for sale or sold at retail after the thirty-first of December, 1971, shall be identified with a reflective device of a type approved by the director; however, this provision shall not apply to such vehicles when traveling in any escorted parade. The reflective device shall be visible from the rear and mounted in a manner approved by the director. All vehicles specified in this section shall be equipped with such reflective device after the thirty-first of December, 1971. The director, when approving such device, shall be guided as far as practicable by the standards of the American society of agricultural engineers. No vehicle other than those specified in this section shall display a reflective device approved for the use herein described. On vehicles specified herein operating at speeds above twenty-five miles per hour, the reflective device shall be removed or hidden from view.

3. Garbage collection vehicles, when operated on the streets or highways of this state at speeds of twenty-five miles per hour or less, may display a reflective device of a type and in a manner approved by the director. At speeds in excess of twenty-five miles per hour the device shall not be visible.

Any person who violates any provision of this section shall be fined as provided in section 805.8, subsection 2, paragraph "d".

87 Acts, ch 186, §3 SF 359
Subsection 1 amended

321.445 Safety belts and safety harnesses—use required.

1. Except for motorcycles or motorized bicycles, 1966 model year or newer motor vehicles subject to registration in Iowa shall be equipped with safety belts and safety harnesses of a type and installed in a manner approved by rules adopted by the department pursuant to chapter 17A. The department shall adopt rules regarding the types of safety belts and safety harnesses required to be installed in motor vehicles and the manner in which they are installed. The rules shall conform with federal motor vehicle safety standard numbers 209 and 210 as published in 49 C.F.R. §§571.209-571.210 and with prior federal motor vehicle safety standards for seat belt assemblies and seat belt assembly anchorages applicable for the motor vehicle's model year. The department may adopt rules which comply with changes in the applicable federal motor vehicle safety standards with regard to the type of safety belts and safety harnesses and their manner of installation.

2. The driver and front seat occupants of a type of motor vehicle which is subject to registration in Iowa, except a motorcycle or a motorized bicycle, shall each wear a properly adjusted and fastened safety belt or safety harness any time the vehicle is in forward motion on a street or highway in this state except that a child under six years of age shall be secured as required under section 321.446.

This subsection does not apply to:

a. The driver or front seat occupants of a motor vehicle which is not required to be equipped with safety belts or safety harnesses under rules adopted by the department.

b. The driver and front seat occupants of a motor vehicle who are actively engaged in work which requires them to alight from and reenter the vehicle at frequent intervals, providing the vehicle does not exceed twenty-five miles per hour between stops.

c. The driver of a motor vehicle while performing duties as a rural letter carrier for the United States postal service. This exemption applies only between the first delivery point after leaving the post office and the last delivery point before returning to the post office.

d. Passengers on a bus.

e. A person possessing a written certification from a physician on a form provided by the department that the person is unable to wear a safety belt or safety harness due to physical or medical reasons. The certification shall specify the time period for which the exemption applies. The time period shall not exceed twelve months, at which time a new certification may be issued.

f. Front seat occupants of an authorized emergency vehicle while they are being transported in an emergency. However, this exemption does not apply to the driver of the authorized emergency vehicle.

During the six-month period from July 1, 1986 through December 31, 1986, peace officers shall issue only warning citations for violations of this subsection, except this does not apply to drivers subject to the federal motor carrier safety regulation 49 C.F.R. §392.16.

The department, in cooperation with the department of public safety and the department of education, shall establish educational programs to foster compliance with the safety belt and safety harness usage requirements of this subsection.

3. The driver and front seat passengers may be each charged separately for improperly used or nonused equipment under subsection 2. The owner of the motor vehicle may be charged for equipment violations under subsection 1.

4. a. The nonuse of a safety belt or safety harness by a person is not admissible or material as evidence in a civil action brought for damages in a cause of action arising prior to July 1, 1986.

b. In a cause of action arising on or after July 1, 1986, brought to recover damages arising out of the ownership or operation of a motor vehicle, the failure to wear a safety belt or safety harness in violation of this section shall not be considered evidence of comparative fault under section 668.3, subsection 1. However, except as provided in section 321.446, subsection 6, the failure to wear a safety belt or safety harness in violation of this section may be admitted to mitigate damages, but only under the following circumstances:

(1) Parties seeking to introduce evidence of the failure to wear a safety belt or safety harness in violation of this section must first introduce substantial evidence that the failure to wear a safety belt or safety harness contributed to the injury or injuries claimed by the plaintiff.

(2) If the evidence supports such a finding, the trier of fact may find that the plaintiff's failure to wear a safety belt or safety harness in violation of this section contributed to the plaintiff's claimed injury or injuries, and may reduce the amount of plaintiff's recovery by an amount not to exceed five percent of the damages awarded after any reductions for comparative fault.

5. The department shall adopt rules pursuant to chapter 17A providing exceptions from application of subsections 1 and 2 for front seats and front seat

passengers of motor vehicles owned, leased, rented, or primarily used by physically handicapped persons who use collapsible wheelchairs.

87 Acts, ch 120, §5 SF 311
Subsection 5 effective May 12, 1987
NEW subsection 5

321.447 Trucks to carry flares and reflective devices. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

321.448 Display of flares or reflective devices. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

321.449 Motor carrier safety regulations.

A person shall not operate a commercial vehicle on the highways of this state except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal motor carrier safety regulations promulgated under United States Code, Title 49, and found in 49 C.F.R. §§390-399 and adopted under chapter 17A which rules shall be to a date certain.

Rules adopted under this section concerning driver qualifications, hours of service, and recordkeeping requirements do not apply to the operators of public utility trucks, construction trucks and equipment, trucks moving implements of husbandry, and special trucks, other than a truck tractor, operating intrastate. However, construction trucks shall not be construed to include gravel hauling trucks. Gravel hauling trucks and trucks for hire on construction projects are not exempt from this section.

Rules adopted under this section concerning driver age qualifications do not apply to drivers for private and for-hire motor carriers which operate solely intrastate except when the vehicle being driven is transporting a hazardous material in a quantity which requires placarding. The minimum age for the exempted intrastate operations is eighteen years of age.

87 Acts, ch 170, §13 HF 371
1987 amendment effective January 1, 1988; 87 Acts, ch 170, §21 HF 371
Section stricken and rewritten

321.450 Hazardous materials transportation regulations.

A person shall not transport or have transported or shipped within this state any hazardous material except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal hazardous materials regulations promulgated under United States Code, Title 49, and found in 49 C.F.R. §§107, 171 to 173, 177, and 178.

87 Acts, ch 170, §14 HF 371
1987 amendment effective January 1, 1988; 87 Acts, ch 170, §21 HF 371
Section stricken and rewritten

321.453 Exceptions.

The provisions of this chapter governing size, weight, and load do not apply to fire apparatus, to road maintenance equipment owned by or under lease to any state or local authority, or to implements of husbandry temporarily moved upon a highway, or to implements moved from farm site to farm site or between the retail seller and a farm purchaser within a one hundred mile radius from the retail seller's place of business, or to indivisible implements of husbandry temporarily moved between the place of manufacture and a retail seller or a farm purchaser, or implements received and moved by a retail seller of implements of husbandry in exchange for an implement purchased, or implements of husbandry moved for repairs, except on any part of the interstate highway system, or to a vehicle operating under the terms of a special permit issued as provided in chapter 321E.

87 Acts, ch 186, §4 SF 359
Section amended

321.454 Width of vehicles.

1. The total outside width of any vehicle or the load thereon shall not exceed eight feet except that a motor home or bus having a total outside width not exceeding eight feet six inches, exclusive of safety equipment, is exempt from the permit requirements of chapter 321E and may be operated on the public highways of the state. However, if hay, straw or stover moved on any implement of husbandry and the total width of load of the implement of husbandry exceeds eight feet in width, the implement of husbandry is not subject to the permit requirements of chapter 321E. If hay, straw or stover is moved on any other vehicle subject to registration, the moves are subject to the permit requirements for transporting loads exceeding eight feet in width as required under chapter 321E. The vehicle width limitations imposed by this subsection only apply to the public highways of the state not subject to the width limitations imposed under subsection 2.

2. The total outside width of any vehicle and load shall not exceed eight feet six inches, exclusive of safety equipment determined necessary for safe and efficient operation by the secretary of the United States department of transportation, on highways designated by the transportation commission. The commission shall adopt rules to designate the highways. The rules adopted under this subsection are exempt from chapter 17A.

87 Acts, ch 186, §5 SF 359; 87 Acts, ch 189, §2 SF 29
 Subsection 1 amended
 Subsection 2 amended

321.457 Maximum length.

1. A combination of four vehicles is not allowed on the highways of this state, except for power units saddle mounted on other power units which shall be restricted to a maximum overall length of sixty-five feet.

2. The maximum length of any motor vehicle or combination of vehicles operated on the highways of this state, unless subject to the maximum length provisions of subsection 3, are as follows:

a. A single truck, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

b. A single bus, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of forty feet, except that buses constructed so as to contain a flexible part allowing articulation shall not exceed sixty-one feet.

c. Except for combinations of vehicles, provisions for which are otherwise made in this chapter, no combination of a truck tractor and a semitrailer coupled together or a motor truck and a trailer or semitrailer coupled together unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet.

d. However, a mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided that the mobile home and its towing unit are not in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck or "pickup" is not a motor truck. A portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that the vehicle or combination of vehicles drawing the loading chute is not in excess of the legal length provided for such vehicles or combinations.

e. Combinations of vehicles coupled together which are used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, and boats shall not exceed sixty-five feet in overall length. However, the load carried on a truck-semitrailer combination may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper.

f. A combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of sixty feet.

g. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state on July 1, 1974. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 code of federal regulations, paragraphs 1048.10, 1048.38, and 1048.101 as they exist on July 1, 1974.

h. A semitrailer shall not have a distance between the kingpin and the center of its rearmost axle in excess of forty feet, except a semitrailer used principally for hauling livestock, a semitrailer used exclusively for hauling self-propelled industrial and construction equipment, or a semitrailer used exclusively for the purposes described in paragraph e of this subsection. A semitrailer which is a 1980 or older model having a distance between the kingpin and center of the rearmost axle of more than forty feet may be operated on the highways of this state if a special overlength permit is obtained from the department for the vehicle. The special overlength permit shall be valid until the semitrailer is inoperable.

3. The maximum length of any motor vehicle or combination of vehicles operated on the highways of this state which are designated by the transportation commission shall be as follows:

a. A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of fifty-three feet when operating in a truck tractor-semitrailer combination.

b. A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of twenty-eight feet six inches when operating in a truck tractor-semitrailer-trailer combination.

c. Power units designed to carry cargo, when used in combination with a trailer or semitrailer shall not exceed sixty-five feet in overall length for the combination.

The commission shall adopt rules to designate the highways. The rules adopted by the department under this paragraph are exempt from chapter 17A.

4. Fire fighting apparatus and vehicles operated during daylight hours when transporting poles, pipe, machinery, or other objects of a structural nature which cannot be readily disassembled when required for emergency repair of public service facilities or properties are not subject to the limitations on overall length of vehicles and combinations of vehicles imposed under this section. However, for operation during nighttime hours, these vehicles and the load being transported shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps at the extreme ends of the projecting load to clearly mark the dimensions of the load. A member of the state highway safety patrol shall also be notified prior to the operation of the vehicle.

87 Acts, ch 186, §6-10 SF 359

Subsection 2, paragraphs c and e amended

Subsection 3, unnumbered paragraph 1 amended

Subsection 3, last paragraph amended

Subsection 5 stricken

321.471 Local authorities may restrict.

1. Local authorities with respect to a highway under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon the highway or

impose restrictions as to the weight of vehicles to be operated upon the highway, except implements of husbandry as defined in section 321.1, subsection 16 and implements of husbandry loaded on hauling units for transporting the implements to locations for purposes of repair, for a total period of not to exceed ninety days in any one calendar year, whenever the highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles on the highway is prohibited or the permissible weights reduced.

A person who violates the provisions of the ordinance or resolution shall, upon conviction or a plea of guilty, be subject to a fine determined by dividing the difference between the actual weight and the maximum weight established by the ordinance or resolution by one hundred, and multiplying the quotient by two dollars. Local authorities may issue special permits, during periods the restrictions are in effect, to permit limited operation of vehicles upon specified routes with loads in excess of any restrictions imposed under this subsection, but not in excess of load restrictions imposed by any other provision of this chapter, and the authorities shall issue the permits upon a showing that there is a need to move to market farm produce of the type subject to rapid spoilage or loss of value or to move to any farm feeds or fuel for home heating purposes.

2. Upon a finding that a bridge or culvert does not meet established standards set forth by state and federal authorities, local authorities may by ordinance or resolution impose limitations for an indefinite period of time on the weight of vehicles upon bridges or culverts located on highways under their sole jurisdiction. The ordinance or resolution shall not apply to implements of husbandry as defined in section 321.1, subsection 16 or to implements of husbandry loaded on hauling units for transporting the implements to locations for purposes of repair. A person who violates the ordinance or resolution shall, upon conviction or a guilty plea, be subject to a fine determined by dividing the difference between the actual weight of the vehicle and the maximum weight allowed by the ordinance or resolution by one hundred and multiplying the quotient by two dollars. Local authorities may issue or approve special permits allowing the operation over a bridge or culvert of vehicles with weights in excess of restrictions imposed under the ordinance or resolution, but not in excess of load restrictions imposed by any other provision of this chapter.

87 Acts, ch 162, §1 HF 533
Section amended

321.472 Signs posted.

The local authority enacting any ordinance or resolution authorized under section 321.471 shall erect and maintain signs designating the ordinance or resolution at each end of that portion of any highway or at the location of any bridge or culvert affected thereby, and the ordinance or resolution shall not be effective unless and until the signs are erected and maintained.

87 Acts, ch 162, §2 HF 533
Section amended

321.561 Punishment for violation.

It shall be unlawful for any person convicted as an habitual offender to operate any motor vehicle in this state during the period of time specified in section 321.560. This conviction shall constitute an aggravated misdemeanor.

87 Acts, ch 34, §1 SF 161
Section amended

CHAPTER 321A

MOTOR VEHICLE FINANCIAL RESPONSIBILITY

321A.3 Abstract of operating record—fees to be charged and disposition of fees.

1. The director shall upon request furnish any person a certified abstract of the operating record of a person subject to chapter 321 or this chapter. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of a conviction of the person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the director shall so certify. A fee of four dollars shall be paid for each abstract except by state, county, city or court officials.

2. A sheriff may provide an abstract of the operating record of a person to the person or an individual authorized by the person. The sheriff shall charge a fee of four dollars for each abstract which the sheriff shall transfer to the director quarterly. The sheriff may charge an additional fee sufficient to cover costs incurred by the sheriff in producing the abstract.

3. The abstracts are not admissible as evidence in an action for damages or criminal proceedings arising out of a motor vehicle accident.

4. The abstract of operating record provided under this section shall designate which speeding violations are for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour.

87 Acts, ch 120, §6 SF 311
Subsection 4 effective May 12, 1987; applies to abstracts of operating records issued on or after July 1, 1987; 87 Acts, ch 120, §10 SF 311
NEW subsection 4

321A.14 Suspension to continue until judgments paid and proof given.

Such license, registration, and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is satisfied in full or to the extent hereinafter provided, and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 321A.13 and 321A.16.

87 Acts, ch 14, §1 SF 141
Subsection 2 stricken

CHAPTER 321E

MOVEMENT OF VEHICLES OF EXCESSIVE SIZE AND WEIGHT

321E.14 Fees for permits.

The department or local authorities issuing the permits shall charge a fee of twenty-five dollars for an annual permit and a fee of ten dollars for a single-trip permit and shall determine charges for special permits issued pursuant to section 321E.29 by rules adopted pursuant to chapter 17A. Fees for the movement of buildings, parts of buildings, or unusual vehicles or loads may be increased to cover the costs of inspections by the issuing authority. A fee not to exceed one hundred dollars per ten-hour day or a prorated fraction of that fee per person and car for escort service may be charged when requested or when required under this chapter. Proration of escort fees between state and local authorities when more than one governmental authority provides or is required to provide escort for a movement during the period of a day shall be determined by rule under section 321E.15. The department and local authorities may charge a permit applicant for the cost of trimming trees and removal and replacement of natural obstructions or

official signs and signals or other public or private property required to be removed during the movement of a vehicle and load. In addition to the fees provided in this section, the annual fee for a permit for special mobile equipment, as defined in section 321.1, subsection 17, operated pursuant to section 321E.7, subsection 2, with a combined gross weight up to and including eighty thousand pounds shall be twenty-five dollars and for a combined gross weight exceeding eighty thousand pounds, fifty dollars.

In addition to the fees provided in this section, the annual fee for a permit for a trailer transporting soil conservation equipment operated under section 321E.7, subsection 3, shall be one hundred dollars.

The annual fee for an all-system permit is one hundred twenty dollars which shall be deposited in the road use tax fund.

87 Acts, ch 186, §11 SF 359
Unnumbered paragraph 3 amended

CHAPTER 321J

OPERATING WHILE INTOXICATED

1986 Iowa Acts, ch 1220 applies to any judicial or administrative action which arises due to violation of a section of that chapter or an implementing rule, and which occurs after July 1, 1986.

That chapter, including chapter 321J of the Code, also applies to any judicial or administrative action which arose prior to July 1, 1986, due to a violation of a preceding Code section or implementing rule which was the same or substantially similar to a section in 1986 Iowa Acts, ch 1220, or an implementing rule, if the defendant or defendant's counsel requests that the action proceed under 1986 Iowa Acts, ch 1220.

References in chapter 321J to actions which occurred previously under "this chapter" or "this section" include the preceding Code chapter or section which covers the same or substantially similar actions;

86 Acts, ch 1220, §51, 52

Applicability of section 321J.13, subsection 4, if revocation occurred before July 1, 1986, under section 321B.7, 321B.13, or 321B.16;

87 Acts, ch 148, §2 HF 488

321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more. (OWI)

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in either of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration as defined in section 321J.1 of .10 or more.

2. A person who violates this section commits:

a. A serious misdemeanor for the first offense and shall be imprisoned in the county jail for not less than forty-eight hours to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest, and assessed a fine of not less than five hundred dollars nor more than one thousand dollars. As an alternative to a portion or all of the fine, the court may order the person to perform not more than two hundred hours of unpaid community service. The court may accommodate the sentence to the work schedule of the defendant.

b. An aggravated misdemeanor for a second offense and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, which minimum term cannot be suspended notwithstanding section 901.5.

subsection 3 and section 907.3, subsection 2, and assessed a fine of not less than seven hundred fifty dollars.

c. A class "D" felony for a third offense and each subsequent offense and shall be imprisoned in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than seven hundred fifty dollars. The minimum jail term of thirty days cannot be suspended notwithstanding section 901.5, subsection 3, and section 907.3, subsection 2, however, the person sentenced shall receive credit for any time the person was confined in a jail or detention facility following arrest. If a person is committed to the custody of the director of the department of corrections pursuant to this paragraph and the sentence is suspended, the sentencing court shall order that the offender serve the thirty-day minimum term in the county jail. If the sentence which commits the person to the custody of the director of the department of corrections is later imposed by the court, all time served in a county jail toward the thirty-day minimum term shall count as time served toward the sentence which committed the person to the custody of the director of the department of corrections. A person convicted of a second or subsequent offense shall be ordered to undergo a substance abuse evaluation prior to sentencing. If a person is convicted of a third or subsequent offense or if the evaluation recommends treatment, the offender may be committed to the custody of the director of the department of corrections, who, if the sentence is not suspended, shall assign the person to a facility pursuant to section 246.513 or the offender may be committed to treatment in the community under the provisions of section 907.6.

3. No conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third, or subsequent offense. For the purpose of determining if a violation charged is a second, third, or subsequent offense, deferred judgments pursuant to section 907.3 for violations of this section and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation shall be considered a separate previous offense without regard to whether each was complete as to commission and conviction or deferral of judgment following or prior to any other previous violation.

4. A person shall not be convicted and sentenced for more than one violation of this section if the violation is shown to have been committed by either or both of the means described in subsection 1 in the same occurrence.

5. The clerk of court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence or pronouncement of judgment and sentence for a defendant under this section.

6. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, if there is no evidence of the consumption of alcohol and the medical practitioner had not directed the person to refrain from operating a motor vehicle.

7. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle

is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

8. The court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution, in an amount not to exceed two thousand dollars, for damages resulting directly from the violation. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

9. In any prosecution under this section, the results of a chemical test may not be used to prove a violation of paragraph "b" of subsection 1 if the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal an alcohol concentration of .10 or more.

87 Acts, ch 118, §4 SF 469; 87 Acts, ch 215, §46 HF 594-
 Subsection 2, paragraph c amended
 Subsection 6 amended

321J.3 Court ordered substance abuse evaluation or treatment.

1. On a conviction for a violation of section 321J.2, the court may order the defendant to attend a course for drinking drivers under section 321J.22. If the defendant submitted to a chemical test on arrest for the violation of section 321J.2 and the test indicated an alcohol concentration of .20 or higher, or if the defendant is charged with a second or subsequent offense, the court shall order the defendant, on conviction, to undergo a substance abuse evaluation and the court may order the defendant to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the area school conducting the course for drinking drivers which the person is ordered to attend or the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. A defendant who fails to carry out the order of the court or who fails to successfully complete or attend a course for drinking drivers or an ordered substance abuse treatment program shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

2. As a condition of a suspended sentence or portion of sentence for a second, third, or subsequent offense in violation of section 321J.2, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request

that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

87 Acts, ch 118, §5 SF 469
Subsection 1 amended

321J.13 Hearing on revocation—appeal.

1. Notice of revocation of a person's motor vehicle license or operating privilege served pursuant to section 321J.9 or 321J.12 shall include a form accompanied by a preaddressed envelope on which the person served may indicate by a checkmark if the person wishes to request a temporary restricted license only or if the person wishes a hearing to contest the revocation. The form shall clearly state on its face that the form must be completed and returned within twenty days of receipt or the person's right to a hearing to contest the revocation is foreclosed. The form shall also be accompanied by a statement of the operation of and the person's rights under this chapter.

2. The department shall grant the person an opportunity to be heard within forty-five days of receipt of a request for a hearing if the request is made not later than thirty days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 and either of the following:

a. Whether the person refused to submit to the test or tests.

b. Whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.1 of .10 or more.

3. After the hearing the department shall order that the revocation be either rescinded or sustained. In the event that the revocation is sustained, the administrative hearing officer who conducted the hearing has authority to issue a temporary restricted license to the person whose motor vehicle license or operating privilege was revoked. Upon receipt of the decision of the department to sustain a revocation, the person contesting the revocation shall have ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within fifteen days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within thirty days of the director's order.

4. A person whose motor vehicle license or operating privilege has been revoked under section 321J.9 or 321J.12 may reopen a department hearing on the revocation if the person submits a petition stating that new evidence has been discovered which provides grounds for rescission of the revocation, or if the person submits a petition stating that a criminal action on a charge of a violation of section 321J.2 filed as a result of the same circumstances which resulted in the revocation has resulted in a decision in which the court has held that the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 had occurred to support a request for or to administer a chemical test or which has held the chemical test to be otherwise inadmissible or invalid. Such a decision by the court is binding on the department.

5. The department shall stay the revocation of a person's motor vehicle license or operating privilege for the period that the person is contesting the revocation

under this section or section 321J.14 if it is shown to the satisfaction of the department that the new evidence is material and that there were valid reasons for failure to present it in the contested case proceeding before the department.

6. If the department fails to comply with the time limitations of this section regarding granting a hearing, review by the director or the director's designee, or granting a new hearing, and if the request for a hearing or review by the director was properly made under this section, the revocation of the motor vehicle license or operating privilege of the person who made the request for a hearing or review shall be rescinded. This subsection shall not apply in those cases in which a continuance to the hearing has been granted at the request of either the person who requested the hearing or the peace officer who requested or administered the chemical test.

87 Acts, ch 148, §1 HF 488

Applicability of subsection 4 if revocation occurred before July 1, 1986, under section 321B.7, 321B.13, or 321B.16; 87 Acts, ch 148, §2 HF 488

Subsection 2, unnumbered paragraph 1 amended

321J.17 Civil penalty—separate fund—reinstatement.

When the department revokes a person's motor vehicle license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of one hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in a separate fund dedicated to and used for the purposes of chapter 912 and section 709.10, and for the operation of a missing person clearinghouse and domestic abuse registry by the department of public safety. Any balance in the fund on June 30 of any fiscal year exceeding fifty thousand dollars shall revert to the general fund of the state. A temporary restricted license shall not be issued or a motor vehicle license or nonresident operating privilege reinstated until the civil penalty has been paid.

87 Acts, ch 232, §24 SF 518; 87 Acts, ch 234, §113 HF 671

See Code editor's note to §135.11

Amendment by 87 Acts, ch 232, §24 effective June 30, 1987; 87 Acts, ch 232, §32 SF 518

Section amended

CHAPTER 322B

MOBILE HOME DEALERS

322B.6 Revocation, suspension and denial of license.

The department may revoke, suspend or deny the license of a mobile home dealer, mobile home manufacturer, mobile home distributor, manufacturer's representative or distributor's representative, as applicable, in accordance with the provisions of chapter 17A if the department finds that the mobile home dealer, manufacturer, distributor or representative is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Knowingly making misleading, deceptive, untrue or fraudulent representations in the business of a mobile home dealer, manufacturer, distributor, manufacturer's representative or distributor's representative or engaging in unethical conduct or practice harmful or detrimental to the public.
3. Conviction of a felony related to the business of a mobile home dealer, manufacturer, distributor, manufacturer's representative or distributor's representative. A copy of the record of conviction or plea of guilty shall be sufficient evidence for the purposes of this section.
4. Failing upon the sale or transfer of a mobile home to deliver to the purchaser or transferee of the mobile home sold or transferred, a manufacturer's or importer's certificate, or a certificate of title duly assigned, as provided in chapter 321.

5. Failing upon the purchasing or otherwise acquiring of a mobile home to obtain a manufacturer's or importer's certificate, a new certificate of title or a certificate of title duly assigned as provided in chapter 321.

6. Failing to mail or deliver to the treasurer of the county of the licensee's residence two copies of the signed purchase receipt within forty-eight hours after purchase or acquisition of a mobile home registered in this state.

7. Failing to apply for and obtain from a county treasurer a certificate of title for a used mobile home, titled in Iowa, acquired by the dealer within fifteen days from the date of acquisition, as required under section 321.45, subsection 4.

87 Acts, ch 130, §6 HF 494
NEW subsection 7

CHAPTER 324

MOTOR FUEL TAX LAW

324.54 Fuel tax computation—refund—reporting and payment.

Fuel tax liability under this division shall be computed on the total number of gallons of each kind of motor fuel and special fuel consumed in the operation in Iowa by commercial motor vehicles subject to this division at the same rate for each kind of fuel as would be applicable if taxed under division I or division II of this chapter. A refund against the fuel tax liability so computed shall be allowed, on excess Iowa motor fuel purchased, in the amount of fuel tax paid at the prevailing rate per gallon set out under division I or division II of this chapter on motor fuel and special fuel consumed by commercial motor vehicles, the operation of which is subject to this division.

Notwithstanding any provision of this chapter to the contrary, except as provided in this section, the holder of a permanent permit may make application to the state department of transportation for a refund, not later than the last day of the third month following the quarter in which the overpayment of Iowa fuel tax paid on excess purchases of motor fuel or special fuel was reported as provided in section 324.8, and which application is supported by such proof as the state department of transportation may require. The state department of transportation shall refund Iowa fuel tax paid on motor fuel or special fuel purchased in excess of the amount consumed by such commercial motor vehicles in their operation on the highways of this state.

Application for a refund of fuel tax under this division must be made for each quarter in which the excess payment was reported, and will not be allowed unless the amount of fuel tax paid on the fuel purchased in this state, in excess of that consumed for highway operation in this state in the quarter applied for, is in an amount exceeding ten dollars. An application for a refund of excess Iowa fuel tax paid under this division which is filed for any period or in any manner other than herein set out shall not be allowed.

To determine the amount of fuel taxes due under this division and to prevent the evasion thereof, the state department of transportation shall require a quarterly report on forms prescribed by the state department of transportation. It shall be filed not later than the last day of the month following the quarter reported, and each quarter thereafter. These reports shall be required of all persons who have been issued a permit under this division and shall cover actual operation and fuel consumption in Iowa on the basis of the permit holder's average consumption of fuel in Iowa, determined by the total miles traveled and the total fuel purchased and consumed for highway use by the permittee's commercial motor vehicles in the permittee's entire operation in all states to establish an overall miles per gallon ratio, which ratio shall be used to compute the gallons used for the miles traveled in Iowa.

Subject to compliance with rules adopted by the department, annual reporting may be permitted in lieu of quarterly reporting. A licensee permitted to report annually shall maintain records in compliance with this chapter.

87 Acts, ch 170, §15 HF 371

New unnumbered paragraph 5 effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

NEW unnumbered paragraph 5

324.66 Statutes applicable to motor vehicle fuel tax.

The appropriate state agency shall administer the taxes imposed by this chapter in the same manner as and subject to section 422.25, subsection 4 and section 422.52, subsection 3.

All the provisions of section 422.26 shall apply in respect to the taxes, penalties, interest, and costs imposed by this chapter excepting that as applied to any tax imposed by this chapter, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this chapter, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this chapter. The giving of such information under such circumstances shall not be deemed a violation of section 324.63 as applied to this chapter.

87 Acts, ch 233, §132 SF 511

Unnumbered paragraph 1 amended

324.68 Power of department of revenue and finance or the state department of transportation to cancel licenses.

If a licensee files a false report of the data or information required by this chapter, or fails, refuses, or neglects to file a report required by this chapter, or to pay the full amount of fuel tax as required by this chapter, or is substantially delinquent in paying a tax due, owing, and administered by the department of revenue and finance, and interest and penalty if appropriate, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the licensee corporation, or interest or penalty on the tax, administered by the department, then after ten days' written notice by mail directed to the last known address of the licensee setting a time and place at which the licensee may appear and show cause why the license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown by a preponderance of the evidence that the failure to correctly report or pay was with intent to evade the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by mail to the licensee's last known address.

*If a licensee abuses the privileges for which the license was issued, fails to produce records reasonably requested or fails to extend reasonable co-operation to the appropriate state agency, the licensee shall be advised in writing of a hearing scheduled to determine if the license shall be canceled. The appropriate state agency upon the presentation of a preponderance of evidence may cancel a license for cause.

The director of the appropriate state agency may reissue a license which has been canceled for cause. As a condition of reissuance of a license, in addition to requirements for issuing a new license, the director may require a waiting period not to exceed ninety days before a license can be reissued or a new license issued. The director shall adopt rules specifying those instances for which a waiting period will be required.

Upon receipt of written request from any licensee the appropriate state agency shall cancel the license of the licensee effective on the date of receipt of the request. If, upon investigation, the appropriate state agency finds that a licensee is no longer engaged in the activities for which a license was issued and has not been so engaged for a period of six months, the state agency shall cancel the license and give thirty days' notice of the cancellation mailed to the last known address of the licensee.

*This paragraph inadvertently omitted in 1987 Code

CHAPTER 325

MOTOR VEHICLE CERTIFICATED CARRIERS

325.1 Definitions.

When used in this chapter:

1. The term "*motor vehicle*" shall mean any automobile, automobile truck, motorbus, or other self-propelled vehicle, including any trailer, semitrailer, or other device used in connection therewith not operated upon fixed rails or track, used for the public transportation of freight or passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic, or irregular departures from such termini or route; except those owned by school corporations or used exclusively in conveying school children to and from schools.

2. The term "*motor carrier*" shall mean any person operating any motor vehicle upon any highway in this state.

3. The term "*highway*" shall mean every street, road, bridge, or thoroughfare of any kind in this state.

4. "*Department*" means the state department of transportation.

5. The term "*charter*" means the agreement whereby the owner of a motorbus lets the same to a group of persons as one party for a specified sum and for a specified act of transportation at a specified time and over an irregular route.

6. The term "*charter carrier*" means a person who engages in the business of transporting the public by motorbuses under charter. The term "*charter carrier*" shall not be construed to include taxicabs or persons, firms or corporations having a license, contract or franchise with an Iowa municipality with a population of more than fifteen thousand people as shown by the last federal decennial census, to carry or transport passengers for hire, or a municipality with a population of more than fifteen thousand people as shown by the last federal decennial census, engaged in the business of carrying or transporting passengers for hire, provided however, that municipality or the person, firm or corporation having a license, contract or franchise with an Iowa municipality comply with sections 325.26, 325.28, 325.31 and 325.35, or school bus operators when engaged in transportation involving any school activity or regular route common carriers of passengers.

7. "*Car pool*" means transportation of a group of at least two riders in a vehicle having a seating capacity for not more than eight passengers between a rider's, owner's, or operator's residence or other designated location and a rider's, owner's, or operator's place of employment or other common destination of the group, when the vehicle is driven by one of the members of the group.

8. "*Van pool*" means transportation of a group of riders in a vehicle having a seating capacity for not less than eight passengers and not more than fifteen passengers between a rider's, owner's, or operator's residence or other designated location and a rider's, owner's, or operator's place of employment or other common destination of the group, when the vehicle is driven by one of the members of the group.

9. *“Regional transit system”* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

10. *“Motor carrier of property”* means a person which holds itself out to the general public as engaging in this state in the transportation of property by motor vehicle for compensation, whether over regular or irregular routes, except that a motor carrier of property does not include a motor carrier of passengers engaged in the transportation of baggage or express incidental to its passenger service.

11. *“Regular route motor carrier of passengers”* means a person which holds itself out to the general public as engaging in this state in the transportation of passengers by motor vehicle for compensation over regular routes by scheduled service.

87 Acts, ch 170, §16 HF 371

1987 amendment to subsection 6 effective January 1, 1987; 87 Acts, ch 170, §21 HF 371

Subsection 6 amended

325.29 Driver of vehicle. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

325.37 Safety equipment and regulations for all truck operators. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

325.38 Additional requirements. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

325.39 Violations. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

CHAPTER 326

MOTOR VEHICLE REGISTRATION RECIPROCITY

326.30 Motor vehicle law applicable.

All provisions of chapter 321 insofar as applicable, are extended to include owners who register and title vehicles in this state on a proportional registration basis or who operate interstate on Iowa highways under reciprocity.

87 Acts, ch 108, §9 HF 527

Amendment effective January 1, 1988; 87 Acts, ch 108, §11 HF 527

Section amended

326.45 Issuance—title obligation.

Upon receiving application for and payment of the registration fee and notification of title, the department shall issue registration identification to the applicant carrier and send the certificate of title to the vehicle owner or

lienholder. The department shall adopt rules pursuant to chapter 17A to process registration of vehicles titled in other states.

87 Acts, ch 108, §10 HF 527
Amendment takes effect January 1, 1988; 87 Acts, ch 108, §11 HF 527
Section amended

CHAPTER 327

MOTOR VEHICLE TRUCK OPERATORS

327.18 Drivers—conditions. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

CHAPTER 327A

LIQUID TRANSPORT CARRIERS

327A.7 Drivers requirements. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449, 321.450.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

327A.8 Markings on vehicles.

There shall be attached to each tank vehicle used for the intrastate transportation of liquid, distinctive markings or tags as prescribed by the department.

87 Acts, ch 170, §17 HF 371
1987 amendment effective January 1, 1987; 87 Acts, ch 170, §21 HF 371
Unnumbered paragraph 2, unnumbered paragraph 3, including subsections 1, 2, and 3 and unnumbered paragraph 4 stricken

327A.10 Hours of operation. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449, 321.450.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

327A.11 Rest period. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449, 321.450.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

327A.12 Records kept. Repealed by 87 Acts, ch 170, §20. HF 371 See §321.449, 321.450.

Repeal effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

327A.13 Disabled vehicles.

All vehicles or combination of vehicles shall be equipped with direction signal devices of a type complying with the provisions of section 321.317 relating to such devices and whenever, during hours of darkness, any vehicle is disabled or for any other reason may present a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing the operator of such vehicle shall display such directional signals on such vehicle or combination of vehicles in simultaneous operation.

87 Acts, ch 170, §18 HF 371
1987 amendment effective January 1, 1987; 87 Acts, ch 170, §21 HF 371
Section amended

327A.17 Rules.

Pursuant to chapter 17A, the department may prescribe rules applicable to liquid transport carriers. The department may prescribe and enforce safety rules in the operation of liquid transport carriers and require a periodic inspection of

the equipment of every liquid transport carrier from the standpoint of enforcement of safety rules, and the equipment shall be at all times subject to inspection by the department.

87 Acts, ch 115, §49 SF 374
Section amended

CHAPTER 327H

TAX AID FOR RAILROADS

327H.18 Railroad assistance fund established.

There is established a railroad assistance fund in the office of the treasurer of state. Moneys in this fund shall be expended for providing assistance for the restoration, conservation, improvement and construction of railroad main lines, branch lines, switching yards and sidings. Any unencumbered funds appropriated by the general assembly for branch line railroad assistance shall be deposited in the railroad assistance fund. However, not more than twenty percent of the funds appropriated to the railroad assistance fund from the general fund of the state in any fiscal year shall be used for restoration, conservation, improvement and construction of railroad main lines, switching yards and sidings. Any moneys received by the department by agreements, grants, gifts, or other means from individuals, companies, business entities, cities or counties for the purposes of this section shall be credited to the railroad assistance fund.

87 Acts, ch 17, §9 SF 271
Section affirmed and reenacted effective April 17, 1987; legislative findings; 87 Acts, ch 17, §1, 12 SF 271

327H.20 Assistance agreements.

The department may enter into agreements with railroad corporations, the United States government, cities, counties, and other persons for carrying out the purposes of this chapter. Agreements entered into between the department and railroad corporations under this section may require a railroad corporation to reimburse all or part of the costs paid from the railroad assistance fund from revenue derived from all railroad cars and traffic using the main line, branch line, switching yard or sidings defined in the agreement. An agreement which does not require the repayment of railroad assistance funds used for rehabilitation projects shall require the railroad corporation to establish and maintain a separate corporation account to which an amount equal to all or part of the costs paid from the railroad assistance fund shall be credited from revenue derived from all railroad cars and traffic using the main line, branch line, switching yard or siding defined in the agreement. However, one-half of the funds credited to the railroad assistance fund shall be expended as nonreimbursable grants for rehabilitation programs. Credits to the corporation account by the railroad corporation may be used for the restoration, conservation, improvement, and construction of the railroad corporation's main line, branch lines, switching yards and sidings within the state. The agreement shall stipulate the terms and conditions governing the use of credits to the corporation account as well as a penalty for the use of the account in a manner other than as provided in the agreement.

With the department's approval, a city may appropriate money from its general fund to the railroad assistance fund. The department may agree to pay partial or total reimbursement to a city or county which appropriates money to the railroad assistance fund. Money appropriated to the railroad assistance fund from a city or county shall be used only as provided in section 327H.18 and within the city or county providing the money.

87 Acts, ch 115, §50 SF 374
Unnumbered paragraph 1 amended

327H.24 Reversions—transfers—moneys to be repaid.

Moneys deposited in the railroad assistance fund are not subject to sections 8.33 and 8.39. However, moneys credited to the fund by a city, county, or railroad

district which are unexpended or unobligated following the expiration of an agreement shall be paid back to the city, county, or railroad district.

Notwithstanding section 453.7, subsection 2, interest and earnings on moneys deposited in the railroad assistance fund shall be credited to the railroad assistance fund. Interest and earnings credited to the railroad assistance fund under this paragraph shall be expended as nonreimbursable grants.

87 Acts, ch 232, §25, 27 SF 518

Amendment to unnumbered paragraph 1 effective June 30, 1987; 87 Acts, ch 232, §32 SF 518

Section amended

NEW unnumbered paragraph 2

CHAPTER 331

COUNTY HOME RULE IMPLEMENTATION

331.301 General powers and limitations.

1. A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.

2. A power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board except as otherwise provided by law.

3. The enumeration of a specific power of a county, the repeal of a grant of power, or the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and this section. A county may exercise its general powers subject only to limitations expressly imposed by a state law.

4. An exercise of a county power is not inconsistent with a state law unless it is irreconcilable with the state law.

5. A county shall substantially comply with a procedure established by a state law for exercising a county power unless a state law provides otherwise. If a procedure is not established by state law, a county may determine its own procedure for exercising the power.

6. A county shall not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

7. A county shall not levy a tax unless specifically authorized by a state statute.

8. A county is a body corporate for civil and political purposes and shall have a seal as provided in section 331.552, subsection 4.

9. Supervisors and other county officers may administer oaths and take affirmations as provided in chapter 78.

10. A county may enter into leases or lease-purchase contracts for real and personal property in accordance with the terms and procedures set forth in section 364.4, subsection 4, provided that the references there to cities shall be applicable to counties, the reference to section 384.25 shall be to section 331.443, the reference to section 384.95, subsection 1, shall be to section 331.341, subsection 1, the reference to division VI of chapter 384 shall be to division III, part 3 of chapter 331, and reference to the council shall be to the board.

11. A county may enter into insurance agreements obligating the county to make payments beyond its current budget year to procure or provide for a policy of insurance, a self-insurance program, or a local government risk pool to protect the county against tort liability, loss of property, or any other risk associated with the operation of the county. Such a self-insurance program or local government risk pool is not insurance and is not subject to regulation under chapters 505 through 523C. However, those self-insurance plans regulated pursuant to section 509A.14 shall remain subject to the requirements of section 509A.14 and rules adopted pursuant to that section.

12. The board of supervisors may credit funds to a reserve for the purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph "l"; and section 331.441, subsection 2, paragraph "b". Moneys credited to the reserve, and interest earned on such moneys, shall remain in the reserve until expended for purposes authorized by subsection 11 of this section; section 331.424, subsection 1, paragraph "l"; or section 331.441, subsection 2, paragraph "b".

87 Acts, ch 115, §51 SF 374
Subsection 10 amended

331.307 County infractions.

1. A county infraction is a civil offense punishable by a civil penalty of not more than one hundred dollars for each violation or if the infraction is a repeat offense a civil penalty not to exceed two hundred dollars for each repeat offense.

2. A county by ordinance may provide that a violation of an ordinance is a county infraction.

3. A county shall not provide that a violation of an ordinance is a county infraction if the violation is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747.

4. An officer authorized by a county to enforce a county code or regulation may issue a civil citation to a person who commits a county infraction. The citation may be served by personal service or by certified mail return receipt requested. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the clerk of the district court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

- a. The name and address of the defendant.
- b. The name or description of the infraction attested to by the officer issuing the citation.
- c. The location and time of the infraction.
- d. The amount of civil penalty to be assessed or the alternate relief sought, or both.
- e. The manner, location, and time in which the penalty may be paid.
- f. The time and place of court appearance.
- g. The penalty for failure to appear in court.

5. In proceedings before the court for a county infraction:

a. The county has the burden of proof that the county infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.

b. The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the county and produce evidence or witnesses on the defendant's behalf.

c. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.

d. The defendant may answer by admitting or denying the infraction.

e. If a county infraction is proven, the court shall enter judgment against the defendant. If the infraction is not proven, the court shall dismiss it.

6. Notwithstanding section 602.8106, subsection 3, penalties or forfeitures collected by the court for county infractions shall be remitted to the county in the same manner as fines and forfeitures are remitted to cities for criminal violations under section 602.8106. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.

7. A person against whom judgment is entered, shall pay court costs and fees as in small claims under chapter 631. If the action is dismissed, the county is liable for the court costs and court fees. Where the action is disposed of without payment, or provision for assessment, of court costs, the clerk shall at once enter judgment for costs against the county.

8. Seeking a civil penalty as authorized in this section does not preclude a county from seeking alternative relief from the court in the same action.

9. When judgment has been entered against a defendant, the court may impose a civil penalty or may grant appropriate relief to abate or halt the violation, or both, and the court may direct that payment of the civil penalty be suspended or deferred under conditions established by the court. If a defendant willfully fails to pay the civil penalty or violates the terms of any other order imposed by the court, the failure is contempt.

10. A defendant against whom a judgment is entered may file a motion for a new trial or a motion for a reversal of a judgment as provided by law or rule of civil procedure.

11. This section does not preclude a peace officer of a county from issuing a criminal citation for a violation of a county code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted by the defendant to exist, constitutes a separate offense.

87 Acts, ch 99, §1-3 HF 318

Subsection 3 amended

Subsection 4, paragraph a amended

Subsections 5, 7, and 9-11 amended

331.321 Appointments.

1. The board shall appoint:
 - a. A co-ordinator of disaster services in accordance with section 29C.10.
 - b. A veterans memorial commission in accordance with sections 37.9 to 37.15, when a proposition to erect a memorial building or monument has been approved by the voters.
 - c. A county conservation board in accordance with section 111A.2, when a proposition to establish the board has been approved by the voters.
 - d. The members of the county board of health in accordance with section 137.4.
 - e. One member of the convention to elect the state fair board as provided in section 173.2, subsection 3.
 - f. A temporary board of community mental health center trustees in accordance with section 230A.4 when the board decides to establish a community mental health center, and members to fill vacancies in accordance with section 230A.6.
 - g. The members of the county board of social welfare in accordance with section 234.9.
 - h. A county commission of veteran affairs in accordance with sections 250.3 and 250.4.
 - i. A general relief director in accordance with section 252.26.
 - j. A member of the functional classification board in accordance with section 306.6.
 - k. One or more county engineers in accordance with sections 309.17 to 309.19.
 - l. A weed commissioner in accordance with section 317.3.

m. A county medical examiner in accordance with section 331.801, and the board may provide facilities, deputy examiners, and other employees in accordance with that section.

n. Two members of the county compensation board in accordance with section 331.905.

o. Members of an airport zoning commission as provided in section 329.9, if the board adopts airport zoning under chapter 329.

p. Members of an airport commission in accordance with section 330.20 if a proposition to establish the commission has been approved by the voters.

q. One member of the civil service commission for deputy sheriffs in accordance with section 341A.2 or 341A.3, and the board may remove the member in accordance with those sections.

r. A temporary board of hospital trustees in accordance with sections 347.9 and 347.10 if a proposition to establish a county hospital has been approved by the voters.

s. An initial board of hospital trustees in accordance with section 347A.1 if a hospital is established under chapter 347A.

t. A county zoning commission, an administrative officer, and a board of adjustment in accordance with sections 358A.8 to 358A.11, if the board adopts county zoning under chapter 358A.

u. A board of library trustees in accordance with sections 358B.4 and 358B.5, if a proposition to establish a library district has been approved by the voters, or 358B.18 if a proposition to provide library service by contract has been approved by the voters.

v. A weather modification board, if requested by petition, in accordance with section 361.2.

w. Local representatives to serve with the city development board as provided in section 368.14.

x. Members of a city planning and zoning commission and board of adjustment when a city extends its zoning powers outside the city limits, in accordance with section 414.23.

y. A list of residents eligible to serve as a compensation commission in accordance with section 472.4, in condemnation proceedings under chapter 472.

z. Members of the county judicial magistrate appointing commission in accordance with section 602.6503.

aa. A member of the judicial district department of corrections as provided in section 905.3, subsection 1, paragraph "a".

ab. Members of a county enterprise commission or joint county enterprise commission if the commission is approved by the voters as provided in section 331.471.

ac. Other officers and agencies as required by state law.

2. If the board proposes to establish the office of public defender, it shall do so and appoint the public defender in accordance with section 331.776.

3. If the board proposes to appoint a county surveyor, it shall appoint a person qualified in accordance with section 355.1 and provide the surveyor with a suitable book in which to record field notes and plats.

4. Except as otherwise provided by state law, a person appointed to a county office may be removed by the officer or body making the appointment, but the removal shall be by written order. The order shall give the reasons and be filed in the office of the auditor, and a copy shall be sent by certified mail to the person removed who, upon request filed with the auditor within thirty days of the date of mailing the copy, shall be granted a public hearing before the board on all issues connected with the removal. The hearing shall be held within thirty days of the date the request is filed, unless the person removed requests a later date.

5. A board or commission appointed by the board of supervisors shall notify the county auditor of the name and address of its clerk or secretary.

6. A supervisor serving on another county board or commission shall be paid only as a supervisor for a day which includes official service on both boards.

87 Acts, ch 227, §24 SF 504
Subsection 1, paragraph n amended

331.322 Duties relating to county and township officers.

The board shall:

1. Require and approve official bonds in accordance with chapter 64 and section 682.6, and pay the cost of certain officers' bonds as provided in section 64.11 and section 331.324, subsection 6.
2. Make temporary appointments in accordance with section 66.19, when an officer is suspended under chapter 66.
3. Fill vacancies in county offices in accordance with sections 69.8 to 69.13, and make appointments in accordance with section 69.16.
4. Provide suitable offices for the meetings of the county conservation board and the safekeeping of its records.
5. Furnish offices within the county for the sheriff, and at the county seat for the recorder, treasurer, auditor, county attorney, county surveyor or engineer, county assessor, and city assessor. If the office of public defender is established, the board shall furnish the public defender's office as provided in section 331.776. The board shall furnish the officers with fuel, lights, and office supplies. However, the board is not required to furnish the county attorney or public defender with law books. The board shall not furnish an office also occupied by a practicing attorney to an officer other than the county attorney or public defender.
6. Review the final compensation schedule of the county compensation board and determine the final compensation schedule in accordance with section 331.907.
7. Provide necessary office facilities and the technical and clerical assistance requested by the county compensation board to accomplish the purposes of sections 331.905 and 331.907.
8. Provide the sheriff with county-owned automobiles or contract for privately owned automobiles as needed for the sheriff and deputies to perform their duties, the need to be determined by the board.
9. Provide the sheriff and the sheriff's full-time deputies with necessary uniforms and accessories in accordance with section 331.657.
10. Pay for the cost of board furnished prisoners in the sheriff's custody, as provided in section 331.658, appoint and pay salaries of assistants at the jails, furnish supplies, and inspect the jails.
11. Furnish necessary equipment and materials for the sheriff to carry out the provisions of section 690.2.
12. Install radio materials in the office of the sheriff as provided in section 693.4.
13. Provide for the examination of the accounts of an officer who neglects or refuses to report fees collected, if a report is required by state law. The expense of the examination shall be charged to the officer and collectible on the officer's bond.
14. Establish and pay compensation of township trustees and township clerk, as provided in sections 359.46 and 359.47.
15. Furnish quarters for meetings of the board of review of assessments.
16. Pay reasonable compensation to assistants for the jury commission established under chapter 607A.

87 Acts, ch 227, §25 SF 504
Subsection 7 amended

331.323 Powers relating to county officers.

1. A county may combine the duties of two or more of the following county officers and employees as provided in this subsection:

- a. Sheriff
- b. Treasurer
- c. Recorder
- d. Auditor
- e. Medical examiner
- f. General relief director
- g. County care facility administrator
- h. Commission on veteran affairs
- i. Director of social welfare
- j. County assessor
- k. County weed commissioner.

If a petition of electors equal in number to twenty-five percent of the votes cast for the county office receiving the greatest number of votes at the preceding general election is filed with the auditor, the board shall direct the commissioner of elections to call an election for the purpose of voting on the proposal. If the petition contains more than one proposal for combining duties, each proposal shall be listed on the ballot as a separate issue. If the majority of the votes cast is in favor of a proposal, the board shall take all steps necessary to combine the duties as specified in the petition.

The petition shall state the offices and positions to be combined and the offices or positions to be abolished. Offices and positions that have been combined may be subsequently separated by a petition and election in the same manner.

If an appointive officer or position is abolished, the term of office of the incumbent shall terminate one month from the day the proposal is approved. If an elective office is abolished, the incumbent shall hold office until the completion of the term for which elected, except that if a proposal is approved at a general election which fills the abolished office, the person elected shall not take office.

When the duties of an officer or employee are assigned to one or more elected officers, the board shall set the initial salary for each elected officer. Thereafter, the salary shall be determined as provided in section 331.907.

2. The board may:

a. Require additional security on an officer's bond, in accordance with sections 65.2 and 65.3, or hear a petition of the surety for release and require a new bond, in accordance with sections 65.4 to 65.8.

b. Require any county officer to make a report to it under oath on any subject connected with the duties of the office, and remove from office by majority vote an officer who refuses or neglects to make a report or give a bond required by the board within twenty days after the requirement is made known to the officer.

c. Compromise an unsatisfied judgment rendered in favor of the county against a county officer and the sureties on the officer's bond, if the county is satisfied that the full amount cannot be collected. The county may compromise with one or more of the sureties and release those sureties if the officer and each of the sureties on the officer's bond execute a written consent to the compromise and to the release of each of the sureties who agree to the compromise, and in the writing agree that the compromise and release do not release any of the sureties who do not agree to the compromise. The written consent shall be filed with the auditor. If the judgment is based upon a default in county funds, the money received under the compromise shall be paid pro rata to the funds in proportion to the amount each fund was in default at the time the judgment was rendered.

d. Authorize a county officer to destroy records in the officer's possession which have been on file for more than ten years, and are not required to be kept as permanent records.

e. Enter into an agreement with one or more other counties to share the services of a county attorney, in accordance with section 331.753.

f. Provide that the county attorney be a full-time or part-time officer in accordance with section 331.752.

- g.* Establish the number of deputies, assistants, and clerks for the offices of auditor, treasurer, recorder, sheriff, and county attorney.
- h.* Exercise other powers authorized by state law.

87 Acts, ch 115, §52 SF 374; 87 Acts, ch 227, §26 SF 504

Subsection 1, unnumbered paragraph 5 amended

Subsection 2, paragraph b stricken and paragraphs c-i relettered as b-h

331.361 County property.

1. Counties bounded by a body of water have concurrent jurisdiction over the entire body of water lying between them.
2. In disposing of an interest in real property by sale or exchange, by lease for a term of more than three years, or by gift, the following procedures shall be followed, except as otherwise provided by state law:
 - a.* The board shall set forth its proposal in a resolution and shall publish notice of the time and place of a public hearing on the proposal, in accordance with section 331.305.
 - b.* After the public hearing, the board may make a final determination on the proposal by resolution.
 - c.* When unused highway right-of-way is not being sold or transferred to another governmental authority, the county shall comply with the requirements of section 306.23.
3. The board shall not dispose of real property by gift except for a public purpose, as determined by the board, in accordance with other state law. However, the board may dispose of real property for use in an Iowa homesteading program under section 220.14 for a nominal consideration.
4. On the application of a honorably discharged soldier, sailor, marine, or nurse of the army or navy of the United States who was disabled in the Philippine insurrection, China relief expedition, World War I, World War II, from December 7, 1941, to December 31, 1946, both dates inclusive, Korean Conflict, from June 25, 1950, to January 31, 1955, both dates inclusive, or Vietnam Conflict, from August 5, 1964, to June 30, 1973, both dates inclusive, the board shall reserve in the county courthouse a reasonable amount of space in the lobby to be used by the applicant rent-free as a stand for the sale of newspapers, tobaccos, and candies. If there is more than one applicant for reserved space, the board shall award the space at its discretion. The board shall prescribe the regulations by which a stand shall be operated.
5. The board shall:
 - a.* Proceed upon a petition to establish a memorial hall or monument under chapter 37, as provided in that chapter.
 - b.* Comply with section 103A.10, subsection 4, in the construction of new buildings.
 - c.* Proceed upon a petition to, or with approval of the voters, establish a county public hospital under chapter 347 or sell or lease a county hospital for use as a private hospital or as a merged area hospital under chapter 145A or sell or lease a county hospital in conjunction with the establishment of a merged area hospital in accordance with procedures set out in chapter 347.
 - d.* Bid for real property at a tax sale as required under section 446.19, and handle the property in accordance with section 446.31 and chapter 569.
 - e.* Require the conduction of a life cycle cost analysis for county facilities in accordance with chapter 470.
 - f.* Comply with chapter 601C if food service is provided in public buildings.
 - g.* Comply with section 601D.9 if curbs and ramps are constructed.
 - h.* Provide facilities for the district court in accordance with section 602.1303.
 - i.* Perform other duties required by state law.
6. In exercising its power to manage county real property, the board may lease land for oil and gas exploration as provided in section 84.21.

7. The board shall not lease, purchase, or construct a facility or building before considering the leasing of a vacant facility or building which is located in the county and owned by a public school corporation. The board may lease a facility or building owned by the public school corporation with an option to purchase the facility or building in compliance with sections 297.22 to 297.24. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the board at least thirty days before the termination of the lease.

87 Acts, ch 35, §2 SF 129
Subsection 2, NEW paragraph c

331.402 Powers relating to finances—limitations.

1. The payment of county obligations by anticipatory warrants is subject to chapters 74 and 74A and other applicable state law. Anticipatory warrants drawn on the secondary road fund are also subject to sections 309.46 to 309.55.

2. The board may:

a. Require a person who is not a part of county government but is receiving county funds to submit to audit by auditors chosen by the county. The person shall make available all pertinent records needed for the audit.

b. Enter into an agreement with the state department of human services for assistance in accordance with section 249A.12.

c. Levy within a township at a rate not to exceed the rate permitted under sections 359.30 and 359.33 for the care and maintenance of cemeteries, if the township officials fail to levy the tax as needed.

d. Authorize the county auditor to issue warrants for certain purposes as provided in section 331.506, subsection 3.

e. Impose a hotel and motel tax in accordance with chapter 422A.

f. Order the suspension of property taxes or cancel and remit the taxes of certain persons as provided in sections 427.8 and 427.10.

g. Provide for a partial exemption from property taxation in accordance with chapter 427B.

h. Contract with certified public accountants to conduct the annual audit of the financial accounts and transactions of the county as provided in section 11.6.

3. A county may enter into loan agreements to borrow money for any public purpose in accordance with the terms and procedures set forth in section 384.24A, and the references in that subsection to cities are applicable to counties, the reference to section 384.25 is applicable to section 331.443, and the references to the council are applicable to the board.

87 Acts, ch 103, §1 HF 523
NEW subsection 3

331.429 Secondary road fund.

1. Except as otherwise provided by state law, county revenues for secondary road services shall be credited to the secondary road fund, including the following:

a. Transfers from the general fund not to exceed in any year the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county multiplied by the ratio of current taxes actually collected and apportioned for the general basic levy to the total general basic levy for the current year, and an amount equivalent to the moneys derived by the general fund from military service tax credits under chapter 426A, mobile home taxes under section 135D.22, the personal property tax replacement fund under section 427A.12, subsection 6, and delinquent taxes for prior years collected and apportioned to the general basic fund in the current year, multiplied by the ratio of sixteen and seven-eighths cents to three dollars and fifty cents.

b. Transfers from the rural services fund not to exceed in any year the dollar equivalent of a tax of three dollars and three-eighths cents per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county multiplied by the ratio of current taxes actually collected and apportioned for the rural services basic levy to the total rural services basic levy for the current year and an amount equivalent to the moneys derived by the rural services fund from the livestock tax credits under section 427.17, military service tax credits under chapter 426A, mobile home taxes under section 135D.22, the personal property tax replacement fund under section 427A.12, subsection 6, and delinquent taxes for prior years collected and apportioned to the rural services basic fund in the current year, multiplied by the ratio of three dollars and three-eighths cents to three dollars and ninety-five cents.

c. Moneys allotted to the county from the state road use tax fund.

d. Moneys provided by individuals from their own contributions for the improvement of any secondary road.

e. Other moneys dedicated to this fund by law including but not limited to sections 306.15, 309.52, 311.23, 311.29, and 313.28.

2. The board may make appropriations from the secondary road fund for the following secondary road services:

a. Construction and reconstruction of secondary roads and costs incident to the construction and reconstruction.

b. Maintenance and repair of secondary roads and costs incident to the maintenance and repair.

c. Payment of all or part of the cost of construction and maintenance of bridges in cities having a population of eight thousand or less and all or part of the cost of construction of roads which are located within cities of less than four hundred population and which lead to state parks.

d. Special drainage assessments levied on account of benefits to secondary roads.

e. Payment of interest and principal on bonds of the county issued for secondary roads, bridges, or culverts constructed by the county.

f. A legal obligation in connection with secondary roads and bridges, which obligation is required by law to be taken over and assumed by the county.

g. Secondary road equipment, materials, and supplies, and garages or sheds for their storage, repair, and servicing.

h. Assignment or designation of names or numbers to roads in the county and erection, construction, or maintenance of guideposts or signs at intersections of roads in the county.

i. The services provided under sections 306.15, 309.18, 309.52, 311.7, 311.23, 313A.23, 316.14, 455.50, 455.118, 460.7, and 460.8, or other state law relating to secondary roads.

87 Acts, ch 160, §1 HF 634; 87 Acts, ch 169, §5 HF 626

See Code editor's note to §135.11

Subsection 1, paragraphs a and b amended

331.441 Definitions.

1. As used in this part, the use of the conjunctive "and" includes the disjunctive "or" and the use of the disjunctive "or" includes the conjunctive "and," unless the context clearly indicates otherwise.

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

a. "General obligation bond" means a negotiable bond issued by a county and payable from the levy of ad valorem taxes on all taxable property within the county through its debt service fund which is required to be established by section 331.430.

b. "Essential county purpose" means any of the following:

(1) Voting machines or an electronic voting system.

(2) Bridges on highways or parts of highways which are located along the corporate limits of cities and are partly within and partly without the limits and are in whole or in part secondary roads.

(3) Sanitary disposal projects as defined in section 455B.301.

(4) Works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams, including the planning, acquisition, leasing, construction, reconstruction, extension, remodeling, improvement, repair, equipping, maintenance, and operation of the works and facilities.

(5) Public buildings, including the site or grounds of, and the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost does not exceed the following limits:

(a) Two hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Two hundred fifty thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Three hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) Four hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) Five hundred thousand dollars in a county having a population of more than two hundred thousand.

(6) Funding or refunding outstanding indebtedness if the outstanding indebtedness exceeds five thousand dollars on the first day of January, April, June or September in any year. However, a county shall not levy taxes to repay refunding bonds for bridges on property within cities.

(7) Enlargement and improvement of a county hospital acquired and operated under chapter 347A, subject to a maximum of two percent of the assessed value of the taxable property in the county. However, notice of the proposed bond issue shall be published once each week for two consecutive weeks and if, within twenty days following the date of the first publication, a petition requesting an election on the proposal and signed by qualified voters of the county equal to at least twenty percent of the votes cast at the preceding election for governor is filed with the county auditor, the proposal is subject to the election requirements in section 331.442, subsections 2, 3 and 4 for general county purpose bonds.

(8) The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

(9) The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures or properties or the abatement of a nuisance.

(10) The establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, or for other purposes as may be authorized under chapter 403A.

c. "General county purpose" means any of the following:

(1) A memorial building or monument to commemorate the service rendered by soldiers, sailors, and marines of the United States, including the acquisition of ground and the purchase, erection, construction, reconstruction, and equipment of the building or monument, to be managed by a commission as provided in chapter 37.

(2) Acquisition and development of land for a public museum, park, parkway, preserve, playground, or other recreation or conservation purpose to be managed by the county conservation board. The board may submit a proposition under this

subparagraph only upon receipt of a petition from the county conservation board asking that bonds be issued for a specified amount.

(3) The building and maintenance of a bridge over state boundary line streams. The board shall submit a proposition under this subparagraph to an election upon receipt of a petition which is valid under section 331.306.

(4) Contributions of money to the state department of transportation to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state.

(5) An airport, including establishment, acquisition, equipment, improvement, or enlargement of the airport.

(6) A joint city-county building, established by contract between the county and its county seat city, including purchase, acquisition, ownership, and equipment of the county portion of the building.

(7) A county health center as defined in section 346A.1, including additions and facilities for the center and including the acquisition, reconstruction, completion, equipment, improvement, repair, and remodeling of the center, additions, or facilities. Bonds for the purpose specified in this subparagraph are exempt from taxation by the state and the interest on the bonds is exempt from state income taxes.

(8) A county public hospital, including procuring a site and the erection, equipment, and maintenance of the hospital, and additions to the hospital, subject to the levy limits in section 347.7.

(9) Public buildings, including the site or grounds of, the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost exceeds the limits stated in subsection 2, paragraph "b", subparagraph (5).

(10) The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the county alone, would be for a general county purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

(11) Any other purpose which is necessary for the operation of the county or the health and welfare of its citizens.

3. The "cost" of a project for an essential county purpose or general county purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

87 Acts, ch 103, §2-4 HF 523

Subsection 2, paragraph b, NEW subparagraphs (9) and (10)

Subsection 2, paragraph c, subparagraph (11) amended

Subsection 3 amended

331.478 Noncurrent debt authorized.

1. A county may contract indebtedness and issue bonds as otherwise provided by state law.

2. The board may by resolution authorize noncurrent debt as defined in subsection 3 which is payable from resources accruing after the end of the fiscal year in which the debt is incurred, in accordance with section 331.479, for any of the following purposes:

a. Expenditures for bridges or buildings destroyed by fire, flood, or other extraordinary casualty.

b. Expenditures incurred in the operation of the courts.

c. Expenditures for bridges which are made necessary by the construction of a public drainage improvement.

d. Expenditures for the benefit of a person entitled to receive assistance from public funds.

e. Expenditures authorized by vote of the electorate.

f. Contracts executed on the basis of the budget submitted as provided in section 309.93.

g. Expenditures authorized by supervisors acting in the capacity of trustees or directors of a drainage district or other special district.

h. Expenditures for land acquisition and capital improvements for county conservation purposes not to exceed in any year the monetary equivalent of a tax of six and three-fourths cents per thousand dollars of assessed value on all the taxable property in the county.

i. Expenditures for purposes for which counties may issue general obligation bonds without an election under state law.

3. Noncurrent debt authorized by subsection 2 may take any of the following forms:

a. Anticipatory warrants subject to chapter 74. Anticipatory warrants drawn on the secondary road fund are also subject to sections 309.46 through 309.55.

b. Advances from other funds.

c. Installment purchase contracts.

d. Other formal debt instruments or obligations other than bonds.

4. Noncurrent debt as defined in subsection 3 shall be retired from resources of the fund from which the expenditure was made for which the debt was incurred.

87 Acts, ch 161, §1 HF 380
Subsection 2, paragraph h amended

331.502 General duties.

The auditor shall:

1. Have general custody and control of the courthouse, subject to the direction of the board.

2. Provide, upon request and payment of the legal fee, a certified copy of any record or account kept in the auditor's office.

3. Pay costs and expenses of legal counsel appointed to represent a member of the Sac and Fox Indian settlement as provided in section 1.15.

4. Keep the complete journals of the general assembly and the official register available for public inspection as provided in section 18.90.

5. Carry out duties relating to the administration of local governmental budgets as provided in chapter 24 and section 384.19.

6. Report the approval of the bond of a public officer approved by the auditor on behalf of the board as provided in section 64.21.

7. Have custody of the official bonds of county and township officers as provided in section 64.23.

8. Take temporary possession of the office and all official books and papers in the office of treasurer when a vacancy occurs and hold the office, books, and records until a successor qualifies as provided in section 69.3. The auditor shall also serve temporarily as the recorder if a vacancy occurs in that office and, if there is no chief deputy assessor, act temporarily as the assessor as provided in section 441.8.

9. Serve as a member of an appointment board to fill a vacancy in the membership of the board as provided in section 69.8, subsection 5.

10. Reserved.

11. Submit annually to the Iowa department of public health the names and addresses of the clerk, or if there is no clerk, the secretary of the local boards of health in the county as provided in section 135.32.

12. Pay to the local registrars of vital statistics the fees due them as certified by the state registrar of vital statistics as provided in section 144.11.

13. Notify the chairperson of the county agricultural extension education council when the bond of the council treasurer has been approved and filed as provided in section 176A.14.
14. Carry out duties relating to estray animals as provided in sections 188.30 to 188.32 and 188.41 to 188.44.
15. Attest to anticipatory warrants issued by the board for the operation of a county limestone quarry as provided in section 202.7.
16. Carry out duties relating to the determination of legal settlement, collection of funds due the county, and support of mentally retarded persons as provided in sections 222.13, 222.50, 222.61 to 222.66, 222.69 and 222.74.
17. Collect the costs relating to the treatment and care of private patients at the state psychiatric hospital as provided in sections 225.23, 225.24 and 225.35.
18. Carry out duties relating to the hospitalization and support of mentally ill persons as provided in sections 229.42, 230.3, 230.11, 230.15, 230.21, 230.22, 230.25, and 230.26.
19. With acceptable sureties, approve the bonds of the members of a county commission of veteran affairs as provided in section 250.6.
20. Issue warrants and maintain a book containing a record of persons receiving veteran assistance as provided in section 250.10.
21. If the legal settlement of a poor person receiving financial assistance is in another county, notify the auditor of that county of the financial assistance as provided in section 252.22.
22. Notify the treasurer of funds due the state for the treatment of indigent persons at the university hospital as provided in section 255.26.
23. Make available to schools, voting machines or sample ballots for instructional purposes as provided in section 256.11, subsection 6.
24. Carry out duties relating to the collection and payment of funds for educating and supporting deaf students as provided in sections 270.6 and 270.7.
25. Order the treasurer to transfer tuition payments from the account of the debtor school corporation to the creditor school corporation as provided in section 282.21.
26. Order the treasurer to transfer transportation service fees from the account of the debtor school corporation to the creditor school corporation as provided in section 285.1, subsection 13.
27. Apportion school taxes, rents, and other money dedicated for public school purposes as provided in section 298.11.
28. Carry out duties relating to school lands and funds as provided in chapter 302.
29. Carry out duties relating to the establishment, alteration, and vacation of public highways as provided in sections 306.21, 306.25, 306.29 to 306.31, 306.37 and 306.40.
30. Carry out duties relating to the establishment and maintenance of secondary roads as provided in chapter 309.
31. Collect costs incurred by the county weed commissioner as provided in section 317.21.
32. Reserved.
33. Maintain a file of certificates of appointment issued by county officers as provided in section 331.903.
34. Furnish information and statistics requested by the governor or the general assembly as provided in section 331.901, subsection 1.
35. Carry out duties relating to the organization, expansion, reduction, or dissolution of a rural water district as provided in chapter 357A.
36. Acknowledge the receipt of funds refunded by the state as provided in section 452.18.

37. Be responsible for all public money collected or received by the auditor's office. The money shall be deposited in a bank approved by the board as provided in chapter 453.

38. Carry out duties relating to the establishment and management of levee and drainage districts as provided in chapters 455, 457, 459, 462, 465 and 466.

39. Serve as a trustee for funds of a cemetery association as provided in sections 566.12 and 566.13.

40. Notify the state department of transportation of claims filed for improvements on public roads payable from the primary road fund as provided in section 573.24.

41. Certify to the clerk of the district court the names, addresses, and expiration date of the terms of office of persons appointed to the county judicial magistrate appointing commission as provided in section 602.6503.

42. Serve as an ex officio member of the jury commission as provided in section 607A.9.

43. Destroy outdated records as ordered by the board.

44. Carry out duties relating to the selection of jurors as provided in chapter 607A.

45. Designate newspapers in which official notices of the auditor's office shall be published as provided in section 618.7.

46. Carry out duties relating to lost property as provided in sections 644.2, 644.4, 644.7, 644.10 and 644.16.

47. For payment of a permanent school fund mortgage, acknowledge satisfaction of the mortgage by execution of a written instrument referring to the mortgage as provided in section 655.1.

48. Receive and record in a book kept for that purpose, moneys recovered from a person willfully committing waste or trespass on real estate as provided in section 658.10.

49. Carry out other duties required by law and duties assigned pursuant to section 331.323.

87 Acts, ch 115, §53 SF 374; 87 Acts, ch 227, §27 SF 504
 Subsection 10 stricken
 Subsection 32 stricken

331.555 Fund management.

1. During each term of office, the treasurer shall keep a separate account of the taxes levied for state, county, school, highway, or other purposes and of all other funds created by law whether of regular, special, or temporary nature. The treasurer shall not pay out or use the money in a fund for any purpose except as specifically authorized by law. The treasurer shall be charged with the amount of tax or other funds collected or received by the treasurer and shall be credited with the amount of taxes or other funds disbursed from each account as authorized by law.

2. Except as provided in section 321.153, on or before the fifteenth day of each month, the treasurer shall prepare sworn statements of the amount of money held by the treasurer on the last day of the preceding month belonging to the state treasury and mail a copy of the statement and the remittance to the treasurer of state. Another copy of the statement shall be mailed to the director of revenue and finance. However, in lieu of mailing the remittance to the treasurer of state, the treasurer may deposit the remittance to the credit of the treasurer of state in an interest-bearing account in a bank in the county as designated by the treasurer of state.

3. If a treasurer fails to comply with the requirements of subsection 2, the treasurer shall forfeit for each failure a sum of not less than one hundred dollars nor more than five hundred dollars to be recovered in an action against the treasurer's bond brought in the name of the director of revenue and finance or the treasurer of state.

4. The treasurer shall make a complete settlement with the county semiannually and when the treasurer leaves office as provided in sections 452.6 and 452.7.

5. The treasurer shall maintain custody of all public moneys in the treasurer's possession and deposit or invest the moneys as provided in section 452.10 and chapter 453.

6. The treasurer shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more counties, cities, or city utilities pursuant to a joint investment agreement.

87 Acts, ch 105, §1 HF 324
NEW subsection 6

331.602 General duties.

The recorder shall:

1. Record all instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law. The instruments presented for filing or recordation shall have typed or legibly printed on them the names of all signatories including the names of acknowledging officers and witnesses beneath the original signatures.

a. However, if an instrument does not contain typed or printed names, the recorder shall accept the instrument for recordation or filing if it is accompanied by an affidavit, to be recorded with the instrument, correctly spelling in legible print or type the signatures appearing on the instrument.

b. The requirement of paragraph "a" does not apply to military discharges, military instruments, wills, court records or to any other instrument dated before July 4, 1959.

c. Failure to print or type signatures as provided in this subsection does not invalidate the instrument.

2. Rerecord an instrument without fee upon presentation of the original instrument by the owner if an error is made in recording the instrument. The recorder shall also note in the margin of the new record a reference to the original record and in the margin of the original record a reference to the book and page of the new record.

3. If an error is made in indexing an instrument, reindex the instrument without fee.

4. Record the registration of a person registered under the federal Social Security Act who requests recordation, and keep an alphabetical index of the record referring to the name of the person registered.

5. Compile a list of deeds recorded in the recorder's office after July 4, 1951, which are dated or acknowledged more than six months before the date of recording and forward a copy of the list each month to the inheritance tax division of the department of revenue and finance.

6. Carry out duties as a member of a nomination appeals commission as provided in section 44.7.

7. Carry out duties relating to the recordation of oil and gas leases as provided in sections 84.22 and 84.24.

8. Endorse on each notice of an unemployment contribution lien the day, hour, and minute that the lien is received from the division of job service of the department of employment services, index the notice of lien, and record the lien as provided in section 96.14, subsection 3.

9. Carry out duties relating to the registration of vessels as provided in sections 106.5, 106.23, 106.51, 106.52, 106.54 and 106.55.

10. Carry out duties relating to the issuance of hunting, fishing, and trapping licenses as provided in sections 110.10, 110.12, 110.13, 110.14, 110.15 and 110.22.

11. Issue migratory waterfowl stamps as provided in chapter 110B.

12. Record the orders and decisions of the fence viewers and index the record in the name of each adjoining owner of land affected by the order or decision as provided in section 113.10. The recorder shall also note that a judgment has been rendered on an appeal of an order or decision of the fence viewers as provided in section 113.24.

13. Reserved.

14. Record without fee the articles of incorporation of farm aid associations as provided in section 176.5.

15. Keep, as a public record, the brand book and supplements supplied by the secretary of agriculture as provided in section 187.11.

16. Record without fee a sheriff's deed for land under foreclosure procedures as provided in section 302.35.

17. Issue snowmobile registrations as provided in sections 321G.4, 321G.6, and 321G.21.

18. Record the measure and plat of a zoning district, building line, or fire limit adopted by a city as provided in section 380.11.

19. Carry out duties relating to the platting of land as provided in chapter 409 and sections 441.65 to 441.71.

20. Submit monthly to the director of revenue and finance a report of the real property transfer tax received.

21. Carry out duties relating to the endorsement, indexing, and recording of income tax liens as provided in section 422.26.

22. Carry out duties relating to the taxation of real estate transfers as provided in chapter 428A.

23. Carry out duties relating to the recording and indexing of affidavits and claims affecting real estate as provided in section 448.17.

24. Forward to the director of revenue and finance a certified copy of any deed, bill of sale or other transfer which shows that it is made or intended to take effect at or after the death of the person executing the instrument as provided in section 450.81.

25. Record papers, statements, and certificates relating to the condemnation of property as provided in section 472.38.

26. Record instruments relating to the dissolution of a corporation or renewal of articles of incorporation as provided in sections 491.23 and 491.27.

27. Carry out duties relating to the recordation of articles of incorporation and other instruments for business corporations as provided in section 496A.53.

28. Record the articles of incorporation of a co-operative association received from the secretary of state as provided in section 497.3.

29. Carry out duties relating to recording of articles of incorporation and charters for nonprofit corporations as provided in chapters 504 and 504A.

29A. Reserved.

30. Carry out duties relating to the recordation of articles of incorporation and other instruments for state banks as provided in chapter 524.

31. Carry out duties relating to the recordation of articles of incorporation and other instruments for credit unions as provided in chapter 533.

32. Carry out duties relating to the recordation of articles of incorporation and other instruments for savings and loan associations as provided in chapter 534.

33. Record, index, and send to the secretary of state instruments relating to limited partnerships as provided in section 545.206.

34. Carry out duties relating to the filing of financing statements or instruments as provided in sections 554.9401 to 554.9408.

35. Register the name and description of a farm as provided in sections 557.22 to 557.26.

36. Record conveyances and leases of agricultural land as provided in section 558.44.

37. Collect the recording fee and the auditor's transfer fee for real property being conveyed as provided in section 558.58.

38. Serve as a member of the jury commission to draw jurors as provided in section 607A.9.

39. Record and index a notice of title interest in land as provided in section 614.35.

40. Designate the newspapers in which the notices pertaining to the office of recorder shall be published as provided in section 618.7.

41. Record a conveyance of property presented by a commissioner appointed by the district court as provided in section 624.35.

42. Carry out duties relating to the indexing of name changes, and the recorder may charge a fee for indexing as provided in section 674.14.

43. Report quarterly to the board the fees collected as provided in section 331.902.

44. Carry out other duties as provided by law and duties assigned pursuant to section 331.323.

87 Acts, ch 30, §17 HF 614
Subsection 29A stricken

331.653 General duties of the sheriff.

The sheriff shall:

1. Execute and return all writs and other legal process issued to the sheriff by legal authority. The sheriff shall execute and return any legal process in the sheriff's possession at the expiration of the sheriff's term of office and if a vacancy occurs in the office of sheriff, the sheriff's deputies shall execute and return the legal processes in their possession as if the sheriff had continued in office. The sheriff's successor or other officer authorized to discharge the duties of the office of sheriff may execute and return the legal processes on behalf of the outgoing sheriff and the sheriff's deputies, but the outgoing sheriff and the sheriff's deputies remain liable for the execution and return of the legal processes in their possession when the sheriff leaves office or the vacancy occurs.

2. Upon written order of the county attorney, make a special investigation of any alleged infraction of the law within the county and report the findings to the county attorney within a reasonable time. Upon completion of the investigation, the sheriff shall file with the auditor a detailed, sworn statement of the expenses of the investigation accompanied by the written order of the county attorney. The board shall audit and pay the reasonable and necessary expenses of the investigation.

3. Upon leaving office, deliver to the sheriff's successor and take the successor's receipt for all books and papers pertaining to the office except as provided in subsection 1, property attached and levied upon, and prisoners in the county jail. The receipt is sufficient indemnity to the outgoing sheriff.

4. Provide bailiff and other law enforcement service to the district judges, district associate judges, and judicial magistrates of the county upon request.

5. Serve as a member of the joint county-municipal disaster services and emergency planning administration as provided in section 29C.9.

6. Enforce the provisions of chapter 32 relating to the desecration of flags and insignia.

7. Carry out duties relating to election contests as provided in sections 57.6, 62.4 and 62.19.

8. Carry out duties relating to the seizure and disposition of illegal oil and gas supplies as provided in section 84.15.

9. Serve a notice or subpoena received from a board of arbitration as provided in section 679B.10.

10. Co-operate with the division of labor services of the department of employment services in the enforcement of child labor laws as provided in section 92.22.

11. Carry out duties relating to the seizure and forfeiture of cigarettes, vehicles and other property used in violation of cigarette tax laws as provided in section 98.32.
12. Observe and inspect any licensed premise for gambling devices and report findings to the license-issuing authority as provided in section 99A.4.
13. Carry out duties relating to the issuance of permits for the possession, transportation and detonation of explosive materials as provided in sections 101A.3, 101A.5, 101A.7, and 101A.8.
14. Seize fish and game taken, possessed or transported in violation of the state fish and game laws as provided in section 109.12.
15. Carry out duties relating to the enforcement of state liquor and beer laws as provided in sections 123.14, 123.117, and 123.118.
16. Reserved.
17. Enforce the payment of the mobile home tax as provided in section 135D.24.
18. Carry out duties relating to the reporting of persons injured in the commission of a crime, either as perpetrators or victims, as provided in sections 147.111 and 147.112.
19. Carry out duties relating to the enforcement of livestock transportation laws as provided in chapter 172B.
20. Investigate disputes in the ownership or custody of branded animals as provided in section 187.10.
21. Destroy a neglected or estray disabled animal as provided in section 188.49.
22. Reserved.
23. Carry out duties relating to the involuntary hospitalization of mentally ill persons as provided in sections 229.7 and 229.11.
24. Carry out duties relating to the investigation of reported child abuse cases and the protection of abused children as provided in section 232.71.
25. Remove, upon court order, an indigent person to the county or state of the person's legal settlement as provided in section 252.18.
26. File a complaint upon receiving knowledge of an indigent person who is ill and may be improved, cured or advantageously treated by medical or surgical treatment or hospital care as provided in section 255.2.
27. Give notice of the time and place of making an appraisal of unneeded school land as provided in sections 297.17 and 297.28.
28. Co-operate with the department of transportation, the department of public safety, and other law enforcement agencies in the enforcement of local and state traffic laws and inspections as provided in sections 321.5 and 321.6.
29. Report the theft and recovery of a registered motor vehicle as provided in section 321.72.
30. Collect unpaid motor vehicle fees and penalties as provided in sections 321.133 to 321.135.
31. If designated by the department of transportation, conduct examinations of applicants for operators', motorized bicycle, and chauffeurs' licenses as provided in section 321.187.
32. Enforce sections 321.372 to 321.379 relating to school buses.
33. Carry out duties relating to the enforcement of laws prohibiting the operation of a motor vehicle while under the influence of an alcoholic beverage as provided in chapter 321J.
34. Upon request, assist the department of revenue and the state department of transportation in the enforcement of motor fuel tax laws as provided in section 324.76.
35. Have charge of the county jails in the county and custody of the prisoners committed to the jails as provided in chapter 356.

36. Execute a distress warrant issued to collect delinquent personal property taxes as provided in section 445.8.

37. Collect delinquent taxes certified by the treasurer as provided in section 445.49.

38. Notify the department of natural resources of hazardous conditions of which the sheriff is notified as provided in section 455B.386.

39. Carry out duties relating to condemnation of private property as provided under chapter 472.

40. Carry out duties relating to the removal and disposition of abandoned motor vehicles as provided in section 556B.1.

41. Carry out duties relating to the determination of what is included in a homestead as provided in section 561.8.

42. Carry out duties relating to liens for services of animals as provided in chapter 580.

43. Carry out duties relating to the service of notice on a jury commissioner or jury manager as provided in section 607A.44.

44. Reserved.

45. Designate the newspapers in which notices pertaining to the sheriff's office are published as provided in section 618.7.

46. Carry out duties relating to the execution of judgments and orders of the court as provided in chapter 626.

47. Add the amount of an advancement made by the holder of the sheriff's sale certificate to the execution, upon verification by the clerk as provided by section 629.3.

48. Upon appointment of the court, serve as a receiver of property of a judgment debtor as provided in sections 630.7 and 630.9.

49. Carry out duties relating to the attachment of property as provided in chapters 639, 640 and 641.

50. Carry out duties relating to garnishment under chapter 642.

51. Carry out duties relating to an action of replevin as provided in chapter 643.

52. Carry out orders of the court or a judge relating to the service or execution of a writ of habeas corpus as provided under chapter 663.

53. Carry out duties relating to the disposition of lost property as provided in chapter 644.

54. Carry out orders of the court requiring the sheriff to take custody and deposit or deliver trust funds as provided in section 682.30.

55. Carry out legal processes directed by an appellate court as provided in section 686.14.

56. Furnish the bureau of criminal identification with the criminal identification records and other information upon direction by the director of public safety as provided in section 690.1.

57. Take the fingerprints of all persons specified under section 690.2 and forward the fingerprint records to the director of public safety.

58. Report information on crimes committed and furnish disposition reports on persons arrested and criminal complaints or information filed in any court as provided in section 692.15.

59. Carry out duties relating to firearm training and the issuance and revocation of firearm permits as provided in chapter 724.

60. Accept custody of persons handed over to the sheriff by the department of public safety as provided in section 804.28.

61. Carry out duties relating to the forfeiture and judgment of bail as provided in section 811.6.

62. Resume custody of a defendant who is recommitted after bail by order of a magistrate as provided in section 811.7.

63. Carry out duties relating to the confinement of mentally ill persons or dangerous persons as provided in section 812.5.

64. Release a defendant in custody upon receipt of a certificate of release as provided in section 814.14.

65. Upon call of the governor or attorney general, render assistance in the enforcement of the law as provided in section 817.2.

66. Upon court order, take an accused person into custody from the warden of a penal institution and convey the person to the place of trial as provided in rule of criminal procedure 7.

67. Receive and detain a defendant transferred from another county under a change of venue as provided in rule of criminal procedure 10, subsection 9.

68. Carry out duties relating to the execution of a judgment for confinement or other execution as provided in rule of criminal procedure 24.

69. Carry out duties relating to the return of service in civil cases as provided in rule of civil procedure 59.

70. Serve a writ of certiorari as provided in rule of civil procedure 312.

71. Carry out other duties required by law and duties assigned pursuant to section 331.323.

87 Acts, ch 115, §54 SF 374
Subsection 16 stricken

331.756 Duties of the county attorney.

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

3. Prosecute all preliminary hearings for charges triable upon indictment.

4. Prosecute misdemeanors when not otherwise engaged in the performance of other official duties.

5. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, and forfeitures accruing to the state or the county or to a school district or road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure professional collection services provided by persons or organizations which are generally considered to have knowledge and special abilities which are not generally available to state or local government.

If professional collection services are procured, the county attorney shall enter on the appropriate record of the clerk of the district court an indication of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the collection service incident to the collection and not paid into the office of the clerk.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to school and township officers, when requested by an officer, upon any matters in which the state, county, school, or township is interested, or relating to the duty of the officer in any matters in which the state,

county, school, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Co-operate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 7.

13. Institute legal proceedings at the request of a unit or organization commander to recover military property from a person who fails to return the property as provided in section 29A.34.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the campaign finance disclosure commission and proceed to institute the recommended actions or advise the commission that prosecution is not merited as provided in section 56.11, subsection 4.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the division of labor services of the department of employment services as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue and finance, in the enforcement of cigar and tobacco tax laws as provided in sections 98.32 and 98.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the director of the department of natural resources or an officer appointed by the director, violations of the state fish and game laws as provided in section 109.35.

25. Assist the division of beer and liquor law enforcement in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. Reserved.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Reserved.

29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.
30. Prosecute, at the request of the attorney general, violations of the law regulating practice professions as provided in section 147.92.
31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.
32. Assist the department of inspections and appeals in the enforcement of the food establishment laws, the Iowa food service sanitation code, and the Iowa hotel sanitation code as provided in sections 170.51, 170A.14 and 170B.18.
33. Institute legal procedures on behalf of the state to prevent violations of the corporate or partnership farming laws as provided in section 172C.3.
34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.
35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.
36. Co-operate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.
37. Prosecute violations of the Iowa commercial feed law of 1974 as provided in section 198.13, subsection 3.
38. Co-operate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.
39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 4.
40. Prosecute violations of the Iowa drug and cosmetic Act as requested by the board of pharmacy examiners as provided in section 203A.7.
41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 246.202.
42. Carry out duties relating to the commitment of a mentally retarded person as provided in section 222.18.
43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a mentally retarded person from parents or other persons who are legally liable for the support of the mentally retarded person as provided in section 222.82.
44. At the direction of a district court judge, investigate the financial condition of a person under commitment proceedings to the state psychiatric hospital or those legally responsible for the person as provided in section 225.13.
45. Appear on behalf of the director of the division of mental health in support of an application to transfer a mentally ill person who becomes incorrigible and dangerous from a state hospital for the mentally ill to the Iowa medical and classification center as provided in section 226.30.
46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.
47. Carry out duties relating to the collection of the costs for the care, treatment, and support of mentally ill persons as provided in sections 230.25 and 230.27.
48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.
49. Prosecute violations of law relating to aid to dependent children, medical assistance, and supplemental assistance as provided in sections 239.20, 249.13 and 249A.14.
50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 242.11.

51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 244.12.
52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 248A.5.
53. Carry out duties relating to the provision of medical and surgical treatment for an indigent person as provided in sections 255.7 and 255.8.
54. Commence legal proceedings to recover school funds as provided in section 302.33.
55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 305.13.
56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.
57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 319.11.
58. At the request of the director of transportation, petition the district court to enforce the habitual offender law as provided in section 321.556.
59. Assist, upon request, the department of transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.
60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.
61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.
62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.
63. Present to the grand jury at its next session a copy of the report filed by the division of corrections of the department of human services of its inspection of the jails in the county as provided in section 356.43.
64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.
65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.
66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue and finance as provided in section 450.1.
67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.
68. Conduct legal proceedings relating to the condemnation of private property as provided in section 472.2.
69. Prosecute persons erecting or maintaining an electric transmission line across a railroad track except as authorized by the natural resource commission at the request of the commission as provided in section 478.29.
70. Institute legal proceedings against violations of insurance laws as provided in sections 511.7 and 515.93.
- 70A. Reserved.
71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.
72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.
73. Petition, in the name of the state, against the owner of any land subject to escheat as provided in sections 567.5 and 567.6.
74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Demand payment or security for a debt owed the state as provided in section 641.1.

76. Seek an attachment against the property of a person owing money to the state as provided in section 641.2.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 675.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 818.

83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 300.

85. Perform other duties required by law and duties assigned pursuant to section 331.323.

87 Acts, ch 30, §18 HF 614; 87 Acts, ch 98, §4 SF 266
 Subsection 5 affirmed and reenacted effective May 4, 1987;
 legislative findings; 87 Acts, ch 98, §1, 4 SF 266
 Subsection 70A stricken

331.802 Deaths—reported and investigated.

1. A person's death which affects the public interest as specified in subsection 3 shall be reported to the county medical examiner or the state medical examiner by the physician in attendance, any law enforcement officer having knowledge of the death, the embalmer, or any other person present. The appropriate medical examiner shall notify the city or state law enforcement agency or sheriff and take charge of the body.

2. If a person's death affects the public interest, the county medical examiner shall conduct a preliminary investigation of the cause and manner of death, prepare a written report of the findings, promptly submit the full report to the state medical examiner on forms prescribed for that purpose, and submit a copy of the report to the county attorney. For each preliminary investigation and the preparation and submission of the required reports, the county medical examiner shall receive a fee determined by the board plus the examiner's actual expenses. The fee and expenses shall be paid by the county for which the service is provided. The fee and expenses of the county medical examiner who performs an autopsy or conducts an investigation of a person who dies after being brought into this state for emergency medical treatment by or at the direction of an out-of-state law enforcement officer or public authority shall be paid by the state. A claim for payment shall be filed with the Iowa department of public health.

3. A death affecting the public interest includes, but is not limited to, any of the following:

- a. Violent death, including homicidal, suicidal, or accidental death.
- b. Death caused by thermal, chemical, electrical, or radiation injury.
- c. Death caused by criminal abortion including self-induced, or by sexual abuse.

d. Death related to disease thought to be virulent or contagious which may constitute a public hazard.

e. Death that has occurred unexpectedly or from an unexplained cause.

f. Death of a person confined in a prison, jail, or correctional institution.

g. Death of a person if a physician was not in attendance within thirty-six hours preceding death, excluding prediagnosed terminal or bedfast cases for which the time period is extended to thirty days, and excluding a terminally ill patient who was admitted to and had received services from a hospice program, as defined in section 135.90, if a physician or registered nurse employed by the program was in attendance within thirty days preceding death.

h. Death of a person if the body is not claimed by a relative or friend.

i. Death of a person if the identity of the deceased is unknown.

j. Death of a child under the age of two years if death results from an unknown cause or if the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.

4. The county medical examiner shall conduct the investigation in the manner required by the state medical examiner and shall determine whether the public interest requires an autopsy or other special investigation. However, if the death occurred in the manner specified in subsection 3, paragraph "j", the county medical examiner shall order an autopsy, the expense of which shall be reimbursed by the Iowa department of public health. In determining the need for an autopsy, the county medical examiner may consider the request for an autopsy from a public official or private person, but the state medical examiner or the county attorney of the county where the death occurred may require an autopsy.

5. a. A person making an autopsy shall promptly file a complete record of the findings in the office of the state medical examiner and the county attorney of the county where death occurred and the county attorney of the county where any injury contributing to or causing the death was sustained.

b. A summary of the findings resulting from an autopsy of a child under the age of two years whose death occurred in the manner specified in subsection 3, paragraph "j", shall be transmitted immediately by the physician who performed the autopsy to the county medical examiner. The report shall be forwarded to the parent, guardian, or custodian of the child by the county medical examiner or a designee of the county medical examiner, or through the infant's attending physician. A copy of the autopsy report filed with the county attorney shall be available to the parents, guardian, or custodian upon request.

6. The report of an investigation made by the state medical examiner or a county medical examiner and the record and report of an autopsy made under this section or chapter 691, shall be received as evidence in any court or other proceedings, except that statements by witnesses or other persons and conclusions on extraneous matters included in the report are not admissible. The person preparing a report or record given in evidence may be subpoenaed as a witness in any civil or criminal case by any party to the cause. A copy of a record, photograph, laboratory finding, or record in the office of the state medical examiner or any medical examiner, when attested to by the state medical examiner or a staff member or the medical examiner in whose office the record, photograph, or finding is filed, shall be received as evidence in any court or other proceedings for any purpose for which the original could be received without proof of the official character of the person whose name is signed to it.

7. In case of a sudden, violent, or suspicious death after which the body is buried without an investigation or autopsy, the county medical examiner, upon being advised of the facts, shall notify the county attorney. The county attorney shall apply for a court order requiring the body to be exhumed in accordance with chapter 144. Upon receipt of the court order, an autopsy shall be performed by a medical examiner or by a pathologist designated by the medical examiner and the

facts disclosed by the autopsy shall be communicated to the court ordering the disinterment for appropriate action.

8. Where donation of the remains of the deceased to a medical school or similar institution equipped with facilities to perform autopsies is provided by will or directed by the spouse, parents or children of full age, of the deceased, any autopsy under this section shall be performed at the direction of the school or institution, and in such a manner as to further the purpose of the donation, while serving the public interest.

87 Acts, ch 69, §1 HF 90
Subsection 3, paragraph g amended

331.905 County compensation board.

1. There is created in each county a county compensation board which shall be composed of seven members who are residents of the county. The members of the county compensation board shall be selected as follows:

a. Two members shall be appointed by the board of supervisors.

b. One member shall be appointed by each of the following county officers: the county auditor, county attorney, county recorder, county treasurer, and county sheriff.

2. The members of the county compensation board shall be appointed to four-year, staggered terms of office. The members of the county compensation board shall not be officers or employees of the state or a political subdivision of the state. A term shall be effective on the first of July of the year of appointment and a vacancy shall be filled for the unexpired term in the same manner as the original appointment.

3. The members of the county compensation board shall receive no compensation, but they shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

4. The county compensation board shall elect a chairperson and vice chairperson annually from among its membership. The county compensation board shall meet at the call of the chairperson or upon written request of a majority of its membership. The concurrence of a majority of the members of the county compensation board shall determine any matter relating to its duties.

5. The board of supervisors shall provide the necessary office facilities and the technical and clerical assistance requested by the county compensation board to carry out its duties.

6. The expenses of the county compensation board members, the salaries and expenses of any technical and clerical assistance, and the cost of providing any facilities shall be paid from the general fund of the county.

87 Acts, ch 227, §28 SF 504
Transition appointments; 87 Acts, ch 227, §30
Subsections 1, 2 and 3 stricken, subsections 1 and 2 rewritten, and subsections 4-7 renumbered as 3-6

331.906 Conventions—membership selection. Repealed by 87 Acts, ch 227, §34. SF 504

331.907 Compensation schedule—preparation and adoption.

1. The annual compensation of the auditor, treasurer, recorder, sheriff, county attorney, and supervisors shall be determined as provided in this section. The county compensation board annually shall review the compensation paid to comparable officers in other counties of this state, other states, private enterprise, and the federal government. In setting the salary of the county sheriff, the county compensation board shall consider setting the sheriff's salary so that it is comparable to salaries paid to professional law enforcement administrators and command officers of the Iowa highway safety patrol, the division of criminal investigation of the department of public safety, and city police agencies in this state. The county compensation board shall prepare a compensation schedule for

the elective county officers for the succeeding fiscal year. A recommended compensation schedule requires a majority vote of the membership of the county compensation board.

2. At the public hearing held on the county budget as provided in section 331.434, the county compensation board shall submit its recommended compensation schedule for the next fiscal year to the board of supervisors for inclusion in the county budget. The board of supervisors shall review the recommended compensation schedule for the elected county officers and determine the final compensation schedule which shall not exceed the compensation schedule recommended by the county compensation board. In determining the final compensation schedule if the board of supervisors wishes to reduce the amount of the recommended compensation schedule, the amount of salary increase proposed for each elected county officer shall be reduced an equal percentage. A copy of the final compensation schedule shall be filed with the county budget at the office of the director of the department of management. The final compensation schedule takes effect on July 1 following its adoption by the board of supervisors.

3. The elected county officers are also entitled to receive their actual and necessary expenses incurred in performance of official duties of their respective offices.

4. In counties having two courthouses, a principal elected county officer and the principal officer's first deputy or assistant may agree in writing to a division of their annual salaries. The division shall not allow for payment to the elected officer and the first deputy or assistant which is greater than the sum of the two salaries otherwise authorized by law. Upon certification to the board by the elected officer involved, the board shall certify to the auditor the annual salaries certified by the elected officer.

87 Acts, ch 227, §29 SF 504
Subsections 1 and 2 stricken and rewritten

CHAPTER 356

JAILS AND MUNICIPAL HOLDING FACILITIES

356.48 Required test.

A person confined to a jail, who bites another person, who causes an exchange of bodily fluids with another person, or who causes any bodily secretion to be cast upon another person, shall submit to the withdrawal of a bodily specimen for testing to determine if the person is infected with a contagious infectious disease. The bodily specimen to be taken shall be determined by the attending physician of that jail or the county medical examiner. The specimen taken shall be sent to the state hygienic laboratory at the state university at Iowa City or some other laboratory approved by the Iowa department of public health. If a person to be tested pursuant to this section refuses to submit to the withdrawal of a bodily specimen, application may be made by the sheriff or person in charge of the jail to the district court for an order compelling the person to submit to the withdrawal and, if infected, to available treatment. An order authorizing the withdrawal of a specimen for testing may be issued only by a district judge or district associate judge upon application by the sheriff or person in charge of the jail.

A person who fails to comply with an order issued pursuant to this section is guilty of a serious misdemeanor.

Personnel at the jail shall be notified if a person confined is found to have a contagious infectious disease.

The sheriff or person in charge of the jail shall take any appropriate measure to prevent the transmittal of a contagious infectious disease to other persons, including the segregation of a confined person who tests positive for acquired immune deficiency syndrome from other confined persons.

For purposes of this section, "*infectious disease*" means any infectious condition which if spread by contamination would place others at serious health risk.

87 Acts, ch 185, §2 SF 340
NEW section

CHAPTER 357

BENEFITED WATER DISTRICTS

Requirement for testing of water supply systems for synthetic organic chemicals and pesticides by January 1, 1988; 86 Acts, ch 1181, §1
City annexation; arbitration; see §357A.21

357.1 Petition—limitation.

The board of supervisors of any county shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited water district, grant a hearing relative to the establishment of such proposed water district; such petition shall set out the following and any other pertinent facts:

1. The need of a public water supply.
2. The approximate district to be served.
3. The approximate number of families in the district.
4. The proposed source of supply.
5. The type of service desired, whether domestic only or for fire protection and other uses.

The board of supervisors may, at its option, require a bond of the petitioners as provided in section 455.10.

A benefited water district located wholly within the corporate limits of a city is not subject to the provisions of this chapter.

Water services, other than water services provided as of April 1, 1987, shall not be provided within two miles of the limits of a city unless the city has approved a new water service plan submitted by the benefited district. If the new water service plan is not approved by the city, the plan may be subject to arbitration.

87 Acts, ch 109, §1 HF 398
NEW unnumbered paragraph 4 (at end of section)

CHAPTER 357A

RURAL WATER DISTRICTS

357A.2 Petition—deposit—limitation.

A petition may at any time be filed with the auditor requesting the supervisors to incorporate and organize a district encompassing an area, not then included in any other district, in any county or any two or more adjacent counties for the purpose of providing an adequate supply of water for domestic purposes to residents of the area who are not served by the water mains of any city water system and who cannot feasibly obtain adequate supplies of water from wells on their own premises.

There shall be filed with the petition a bond with sureties approved by the auditor, or a certified check, credit union certified share draft or cash in an amount sufficient for the payment of all costs and expenses incurred in the proceedings if the district is not finally established.

The petition shall be signed by the owners of at least fifty percent of all land lying within the outside perimeter of the area designated for inclusion in the proposed district, and shall state:

1. The location of the area so designated, describing such area by section, or fraction thereof, and by township and range.

2. The reasons a district is needed.

Water services, other than water services provided as of April 1, 1987, shall not be provided within two miles of the limits of a city by a rural water district incorporated under this chapter or chapter 504A unless the city has approved a new water service plan submitted by the district. If the new water service plan is not approved by the city, the plan may be subject to arbitration.

87 Acts, ch 109, §2 HF 398
NEW unnumbered paragraph 4

357A.21 Annexation of land by a city—arbitration.

A water district organized under chapter 357, 357A, or 504A shall be fairly compensated for losses resulting from annexation. The governing body of a city or water utility and the board of directors or trustees of the water district may agree to terms which provide that the facilities owned by the water district and located within the city shall be retained by the water district for the purpose of transporting water to customers outside the city. If an agreement is not reached within ninety days, the issues shall be submitted to arbitration. An arbitrator shall be selected by a committee which includes one member of the governing body of the city or its designee, one member of the water district's board of directors or trustees or its designee, and a disinterested party selected by the other two members of the committee. A list of qualified arbitrators may be obtained from the American arbitration association or other recognized arbitration organization or association.

87 Acts, ch 109, §3 HF 398
NEW section

CHAPTER 357C

BENEFITED STREET LIGHTING DISTRICTS

357C.3 Time of hearing—notice.

The public hearing shall be held within thirty days of the presentation of the petition. Notice of hearing shall be given by publication as provided in section 331.305.

87 Acts, ch 43, §9 SF 265
Section amended

CHAPTER 358

SANITARY DISTRICTS

358.4 Date and notice of hearing.

1. The board of supervisors to which the petition is addressed, at its next meeting, shall set the time and place for a hearing on the petition. The board shall direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and content of the petition, by publication of a notice as provided in section 331.305. Proof of giving the notice shall be made by affidavit of the publisher and the proof shall be on file with the county auditor at the time the hearing begins. The notice of hearing shall be directed to all persons it may concern, and shall state:

a. That a petition has been filed with the county auditor of the county, naming it, for establishment of a proposed sanitary district, and the name of the proposed district.

b. An intelligible description of the boundaries of the territory to be embraced in the district.

c. The date, hour, and the place where the petition will come on for hearing before the board of supervisors of the named county.

d. That the board of supervisors will fix and determine the boundaries of the proposed district as described in the petition or otherwise, and for that purpose may alter and amend the petition. At the hearing all interested persons shall have an opportunity to be heard on the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries.

2. For a district which does not include land within a city, copy of the notice shall also be sent by mail to each owner, without naming them, of each tract of land or lot within the proposed district as shown by the transfer books of the auditor's office. The mailings shall be to the last known mailing address unless there is on file an affidavit of the auditor or of a person designated by the board to make the necessary investigation, stating that a mailing address is not known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed no less than twenty days before the day set for hearing and proof of service shall be by affidavit of the auditor. The proofs of service required by this subsection shall be on file at the time the hearing begins.

3. In lieu of the mailing to the last known address a person owning land affected by a proposed district may file with the county auditor an instrument in writing designating the address for the mailing. This designation when filed is effective for five years and applies to all proceedings under this chapter. The person making the designation may change the address in the same manner as the original designation is made.

4. In lieu of publication, personal service of the notice may be made upon an owner of land in the proposed district in the manner and for the time required for service of original notices in the district court. Proof of the service shall be on file with the auditor on the date of the hearing.

87 Acts, ch 43, §10 SF 265
Subsection 1, unnumbered paragraph 1 amended

358.13 Ordinances—publication or posting—time of taking effect.

All ordinances, resolutions, orders, rules, and regulations adopted by the board take effect from and after their adoption and publication. The publication shall be by one publication in a newspaper of general circulation in the district, by posting copies in three public places within the district, or by other steps necessary to inform the public.

87 Acts, ch 197, §1 HF 518
Amendment effective June 4, 1987
Section amended

358.16 Power to provide for sewage disposal.

The board of trustees of any sanitary district organized under this chapter shall have power to provide for the disposal of the sewage thereof, including the sewage and drainage of any city or village within the boundaries of such district; to acquire, lay out, locate, establish, construct, maintain, and operate one or more drains, conduits, treatment plants, disposal plants, pumping plants, works, ditches, channels, and outlets of such capacity and character as may be required for the treatment, carrying off, and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district; to lay out, establish, construct, maintain, and operate all such adjuncts, additions, auxiliary improvements, and works as may be necessary or proper for accomplishment of the purposes intended, and to procure supplies of water for operating, diluting, and flushing purposes; to maintain, repair, change, enlarge, and add to such facilities, improvements, and works as may be necessary or proper to meet the future requirements for the purposes aforesaid; and, when necessary for such purposes, any such facilities, improvements, and works and the maintenance and operation thereof may extend beyond the limits of such district, and the rights and powers of said board of trustees in respect thereto shall be the same as if located within

said district, provided, no taxes shall be levied upon any property outside of such district; and provided further, that the district shall be liable for all damages sustained beyond its limits in consequence of any work or improvement authorized hereunder.

The board of trustees, however, may upon such petition of property owners representing at least twenty-five percent of the valuation of property not included within the district as constituted which seeks benefit from the operation of such sanitary district, include such property and the area involved within the limits of such sanitary district, and such added areas shall be subject to the same taxation as other portions of the district.

Nothing contained herein shall be construed to authorize or empower such board of trustees to operate a system of waterworks for the purpose of furnishing water to the inhabitants of the district, or to construct, maintain, or operate local municipal sewerage facilities, or to deprive municipalities within the district of their powers to construct and operate sewers for local purposes within their limits.

The board of trustees of such sanitary district may, however, upon petition of the council or governing body of any incorporated city within the sanitary district, contract with such city to undertake the operation of local municipal sewage facilities as part of the functioning of the sanitary district and make an agreement with such municipality for the levying of additional sewer or sewage disposal taxes, which taxes shall be levied by the municipality as now provided by law.

The board of trustees may require connection to the sanitary sewer system established, maintained, or operated by the district from any adjacent property within the district, and require the installation of sanitary toilets or other sanitary sewage facilities and removal of other toilet and other sewage facilities on the property.

If the property owner does not perform an action required under the preceding paragraph within a reasonable time after notice and hearing, the board of trustees may perform the required action and assess the costs of the action against the property for collection in the same manner as a property tax. The notice shall state the nature of the action and the time within which the action is required to be performed by the property owner, state the date, time, and place where the property owner will be heard by the board of trustees for the purpose of stating why the intended action should not be required, and shall be given by certified mail to the property owner as shown on the records of the county auditor not less than four nor more than twenty days before the date of the hearing.

However, in the event of an emergency when the delay of notice and hearing might cause serious loss or injury to persons or property within the district, the board of trustees may perform any action which may be required under this section without prior notice and hearing, and assess the cost as provided in this section, following notice to the property owner and hearing in the time and manner provided in the preceding paragraph. In that event the board of trustees shall, by resolution, make a finding of the necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent registered professional engineer or architect certifying that emergency action is necessary.

If any amount assessed against property pursuant to this section will exceed one hundred dollars, the board of trustees may permit the assessment to be paid in up to ten annual installments, in the manner and with the same interest rates as provided for assessments against benefited property under chapter 384, division IV.

An assessment levied pursuant to this section, including all interest and penalties, is a lien against the property with respect to which action was taken from the date of filing the schedule of assessments until the assessment is paid. Assessments have equal precedence with ordinary taxes and are not divested by judicial sale.

The procedures for making and levying an assessment pursuant to this section and for an appeal of the assessment are the same procedures as provided in sections 384.59 through 384.67 and sections 384.72 through 384.75, except that any notice required in those sections to be published in a newspaper may be sent by certified mail to the owner of the property to be assessed as shown on the records of the county auditor in lieu of the publication. The references in those sections to the city council are applicable to the board of trustees.

87 Acts, ch 197, §2 HF 518
NEW paragraphs effective June 4, 1987
NEW unnumbered paragraphs 5-10

358.20 Rentals and charges.

Any sanitary district may by ordinance establish just and equitable rates or charges or rentals for the utilities and services furnished by it to be paid to such district by every person, firm or corporation whose premises are served by a connection to such utilities and services directly or indirectly. Such rates, charges, or rentals, as near as may be in the judgment of the board of trustees of the district, shall be equitable and in proportion to the services rendered and the cost thereof, and taking into consideration in the case of each such premises the quantity of sewage produced thereby and its concentration, strength, and pollution qualities. The board of trustees may change such rates, charges, or rentals from time to time as it may deem advisable, and by ordinance may provide for the collection thereof. The board is authorized to contract with any municipality within the district, whereby such municipality may collect or assist in collecting any of such rates, charges, or rentals, whether in conjunction with water rentals or otherwise, and any such municipality is hereby empowered to undertake such collection and render such service. Such rates, charges, or rentals, if not paid when due, shall constitute a lien upon the property served by a connection as aforesaid and shall be collected in the same manner as other taxes.

Sewer rentals, charges, or rates may supplant or replace, in whole or in part, any monetary levy of taxes which may be, or have been, authorized by the board of trustees for any of the following purposes:

1. To meet interest and principal payments on bonds legally authorized for the financing of sanitary utilities in any manner.
2. To pay costs of the construction, maintenance, or repair of such sanitary facilities or utilities, including payments to be made under any contract between municipalities for either the joint use of sewerage or sewage facilities, or for the use by one municipality of all or a part of the sewerage or sewer system of another municipality.

When a sewer rental ordinance has been passed and put into effect, prior ordinances or resolutions providing for monetary levy of taxes against real and personal property for such purposes, or the portion thereof replaced, may be repealed.

87 Acts, ch 197, §3 HF 518
Amendment effective June 4, 1987
Unnumbered paragraph 2 stricken

358.22 Special assessments.

The board of trustees of a sanitary district may provide for payment of all or any portion of the costs of acquiring, locating, laying out, constructing, reconstructing, repairing, changing, enlarging, or extending conduits, ditches, channels, outlets, drains, sewers, laterals, treatment plants, pumping plants, and other necessary adjuncts thereto, by assessing all, or any portion of the costs, on adjacent property according to the benefits derived. For the purposes of this chapter, the board of trustees may define "adjacent property" as all that included within a designated benefited district or districts to be fixed by the board, which may be all of the property located within the sanitary district or any lesser portion of that property. It is not a valid objection to a special assessment that the improvement for which

the assessment is levied is outside the limits of the sanitary district, but a special assessment shall not be made upon property situated outside of the sanitary district. Special assessments pursuant to this section shall be in proportion to the special benefits conferred upon the property, and not in excess of the benefits, and an assessment shall not exceed twenty-five percent of the actual value of the property at the time of levy, and the last preceding assessment roll shall be taken as prima facie evidence of that value.

The assessments may be made to extend over a period of ten years, payable in as nearly equal annual installments as practicable. A majority vote of the board of trustees is requisite and sufficient for any action required by the board of trustees under this section.

Subject to the limitations otherwise stated in this section, a sanitary district organized under this chapter has all of the powers to specially assess the costs of improvements described in this section, including the power to issue special assessment bonds, warrants, project notes, or other forms of interim financing obligations, which cities have under the laws of this state.

87 Acts, ch 197, §4 HF 518
Amendment effective June 4, 1987
Section amended

358.33 Hearing on petition.

The board of supervisors to whom the petition is addressed, at its next regular meeting shall set the time and place when it shall meet for a hearing on the petition, and it shall direct the county auditor in whose office the petition is filed to cause notice to be given to all persons whom it may concern, without naming them, of the pendency and request of the petition for the conveyance and discontinuance by publication of a notice as provided in section 331.305. Proof of giving notice shall be made by affidavit of the publisher and shall be filed with the county auditor at the time the hearing begins.

87 Acts, ch 43, §11 SF 265
Section amended

CHAPTER 358A

COUNTY ZONING COMMISSION

358A.6 Procedure—hearings—notice.

The board of supervisors shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, the regulation, restriction, or boundary shall not become effective until after a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as provided in section 331.305. The notice shall state the location of the district affected by naming the township and section, and the boundaries of the district shall be expressed in terms of streets or roads if possible. The regulation, restriction, or boundary shall be adopted in compliance with section 331.302.

87 Acts, ch 31, §1 HF 583; 87 Acts, ch 43, §12 SF 265
See Code editor's note
Section amended

CHAPTER 359

TOWNSHIPS AND TOWNSHIP OFFICERS

359.7 Notice.

Notice of the time when the petition will be heard shall be given by publication as provided in section 331.305 before the hearing.

87 Acts, ch 43, §13 SF 265
Section amended

CHAPTER 362

DEFINITIONS AND MISCELLANEOUS PROVISIONS

362.5 Interest in public contract prohibited—exceptions.

When used in this section, "contract" means any claim, account, or demand against or agreement with a city, express or implied.

A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's or employee's city. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The payment of lawful compensation of a city officer or employee holding more than one city office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

2. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

3. An employee of a bank or trust company, who serves as treasurer of a city.

4. Contracts made by a city, upon competitive bid in writing, publicly invited and opened.

5. Contracts in which a city officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 9, or both, if the contracts are made by competitive bid, publicly invited and opened, and if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid requirement of this subsection shall not be required for any contract for professional services not customarily awarded by competitive bid.

6. The designation of an official newspaper.

7. A contract in which a city officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.

8. Contracts with volunteer fire fighters or civil defense volunteers.

9. A contract with a corporation in which a city officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

10. A contract made by competitive bid, publicly invited and opened, in which a member of a city board of trustees, commission, or administrative agency has an interest if the member is not authorized by law to participate in the awarding of the contract. The competitive bid requirement of this subsection does not apply to any contract for professional services not customarily awarded by competitive bid.

11. Contracts not otherwise permitted by this section, for the purchase of goods or services by a city having a population of more than two thousand five hundred but less than ten thousand, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand dollars in a fiscal year.

12. Contracts not otherwise permitted by this section, for the purchase of goods or services by a city having a population of two thousand five hundred or less, which benefit a city officer or employee, if the purchases benefiting that officer or

employee do not exceed a cumulative total purchase price of two thousand five hundred dollars in a fiscal year.

87 Acts, ch 203, §1, 2 HF 410
 Subsection 11 amended
 NEW subsection 12

CHAPTER 364

POWERS AND DUTIES OF CITIES

364.22 Municipal infractions.

1. A municipal infraction is a civil offense punishable by a civil penalty of not more than one hundred dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed two hundred dollars for each repeat offense.

2. A city by ordinance may provide that a violation of an ordinance is a municipal infraction.

3. A city shall not provide that a violation of an ordinance is a municipal infraction if the violation is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747.

4. An officer authorized by a city to enforce a city code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service or by certified mail return receipt requested. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the clerk of the district court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

- a. The name and address of the defendant.
 - b. The name or description of the infraction attested to by the officer issuing the citation.
 - c. The location and time of the infraction.
 - d. The amount of civil penalty to be assessed or the alternate relief sought, or both.
 - e. The manner, location, and time in which the penalty may be paid.
 - f. The time and place of court appearance.
 - g. The penalty for failure to appear in court.
5. In proceedings before the court for a municipal infraction:
- a. The city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.
 - b. The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the city and produce evidence or witnesses on the defendant's behalf.
 - c. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.
 - d. The defendant may answer by admitting or denying the infraction.
 - e. If a municipal infraction is proven the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss it.
6. All penalties or forfeitures collected by the court for municipal infractions shall be remitted to the city in the same manner as fines and forfeitures are remitted for criminal violations under section 602.8106. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.
7. A person against whom judgment is entered, shall pay court costs and fees as in small claims under chapter 631. If the action is dismissed, the city is liable

for the court costs and court fees. Where the action is disposed of without payment, or provision for assessment, of court costs, the clerk shall at once enter judgment for costs against the city.

8. Seeking a civil penalty as authorized in this section does not preclude a city from seeking alternative relief from the court in the same action.

9. When judgment has been entered against a defendant, the court may impose a civil penalty or may grant appropriate relief to abate or halt the violation, or both, and the court may direct that payment of the civil penalty be suspended or deferred under conditions established by the court. If a defendant willfully fails to pay the civil penalty or violates the terms of any other order imposed by the court, the failure is contempt.

10. A defendant against whom a judgement is entered may file a motion for a new trial or a motion for a reversal of a judgment as provided by law or rule of civil procedure.

11. This section does not preclude a peace officer of a city from issuing a criminal citation for a violation of a city code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted to exist by the defendant, constitutes a separate offense.

12. The issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or prosecution.

87 Acts, ch 99, §4-6 HF 318
 Subsection 3 amended
 Subsection 4, paragraph a amended
 Subsections 5, 7, 9-11 amended

CHAPTER 372

ORGANIZATION OF CITY GOVERNMENT

372.4 Mayor-council form.

A city governed by the mayor-council form has a mayor and five council members elected at large, unless by ordinance a city so governed chooses to have a mayor elected at large and an odd number of council members but not less than five, including at least two council members elected at large and one council member elected by and from each ward. The council may, by ordinance, provide for a city manager and prescribe the manager's powers and duties, and as long as the council contains an odd number of council members, may change the number of wards, abolish wards, or increase the number of council members at large without changing the form.

However, a city governed, on the effective date of this section*, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large, and one council member from each of four wards, or a special charter city governed, on the effective date of this section, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member elected from each of eight wards, may continue until the form of government is changed as provided in section 372.2 or section 372.9. While a city is thus operating with an even number of council members, the mayor may vote to break a tie vote on motions not involving ordinances, resolutions or appointments made by the council alone, and in a special charter city operating with ten council members under this section, the mayor may vote to break a tie vote on all measures.

The mayor shall appoint a council member as mayor pro tem, and shall appoint the marshal or chief of police except where an intergovernmental agreement makes other provisions for police protection or as otherwise provided in section

400.13. Other officers must be selected as directed by the council. The mayor is not a member of the council and may not vote as a member of the council.

In a city having a population of five thousand or less, the city council may, or shall upon petition of the electorate meeting the numerical requirements of section 372.2, subsection 1, submit a proposal at the next regular or special city election to reduce the number of council members to three. If a majority of the voters voting on the proposal approves it, the proposal is adopted. If the proposal is adopted, the new council shall be elected at the next regular or special city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

87 Acts, ch 97, §1 SF 214
 *See 72 Acts, ch 1088, §9
 NEW unnumbered paragraph 4

372.7 Council-manager-ward form.

A city governed by council-manager-ward form has a council composed of a mayor and six council members. Of the six council members, two may be elected at large and one elected from each of four wards, or one may be elected from each of six wards. The mayor and other council members serve four-year staggered terms. The mayor is a member of the council and may vote on all matters before the council.

The council, by ordinance, may change from one ward option authorized under this section to the other ward option. The ordinance must provide for the election of the mayor and council members as provided in the selected ward option at the next regular city election.

As soon as possible after the beginning of the new term following each city election, the council shall appoint a city manager, and a council member to serve as mayor pro tem.

87 Acts, ch 86, §1 HF 92
 Section amended

372.13 The council.

1. A majority of all council members is a quorum.
2. A vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of the two following procedures:
 - a. By appointment by the remaining members of the council, except that if the remaining members do not constitute a quorum of the full membership, paragraph "b" shall be followed. The appointment shall be for the period until the next pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, whichever is later, there is filed with the city clerk a petition which requests a special election to fill the vacancy and which is signed by eligible electors who are, or would be if registered, entitled to vote to fill the office in question, equal in number to two percent of those who voted for candidates for the office at the last preceding regular election at which the office was on the ballot, but not less than ten persons, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph "b".
 - b. By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed

under paragraph "a", the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election to fill the office shall be called at the earliest practicable date. If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called at the earliest practicable date. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called.

3. The council shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law.

4. Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be made on the basis of that individual's qualifications and not on the basis of political affiliation.

5. The council shall determine its own rules and maintain records of its proceedings. City records and documents, or accurate reproductions, shall be kept for at least five years, except that ordinances, resolutions, council proceedings, and records and documents relating to real property transactions or bond issues shall be maintained permanently.

6. Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claim. Matters discussed in closed session pursuant to section 21.3 shall not be published until entered on the public minutes. However, in cities having more than one hundred fifty thousand population the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies to the city library, the daily newspapers of the city, and to persons who apply at the office of the city clerk, and the pamphlet shall constitute publication as required. Failure by the clerk to make publication is a simple misdemeanor. The provisions of this subsection are applicable in cities in which a newspaper is published, or in cities of two hundred population or over, but in all other cities, posting the statement in three public places in the city which have been permanently designated by ordinance is sufficient compliance with this subsection.

7. By ordinance, the council may divide the city into wards based upon population, change the boundaries of wards, eliminate wards or create new wards.

8. By ordinance, the council shall prescribe the compensation of the mayor, council members, and other elected city officers, but a change in the compensation of the mayor shall not become effective during the term in which the change is adopted, and the council shall not adopt such an ordinance changing the compensation of the mayor or council members during the months of November and December immediately following a regular city election. A change in the compensation of council members shall become effective for all council members at the beginning of the term of the council members elected at the election next following the change in compensation. Except as provided in section 362.5, an elected city officer shall not receive any other compensation for any other city office or city employment during that officer's tenure in office, but may be reimbursed for actual expenses incurred. However, if the mayor pro tem performs the duties of the mayor during the mayor's absence or disability for a continuous period of fifteen days or more, the mayor pro tem may be paid for that period such compensation as determined by the council, based upon the mayor pro tem's performance of the mayor's duties and upon the compensation of the mayor.

9. A council member, during the term for which that member is elected, is not eligible for appointment to any city office if the office has been created or the compensation of the office has been increased during the term for which that member is elected. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which that person was elected if during that time, the compensation of the office has been increased.

87 Acts, ch 203, §3 HF 410
Subsection 8 amended

CHAPTER 376

CITY ELECTIONS

376.4 Candidacy.

An eligible elector of a city may become a candidate for an elective city office by filing with the city clerk a valid petition requesting that the elector's name be placed on the ballot for that office. The petition must be filed not more than seventy-two days nor less than forty-seven days before the date of the election, and must be signed by eligible electors equal in number to at least two percent of those who voted to fill the same office at the last regular city election, but not less than ten persons. Nomination petitions shall be filed not later than five o'clock p.m. on the last day for filing.

The petitioners for an individual seeking election from a ward must be residents of the ward at the time of signing the petition. An individual is not eligible for election from a ward unless the individual is a resident of the ward at the time the individual files the petition and at the time of election.

The petition must include the signature of the petitioners, a statement of their place of residence, and the date on which they signed the petition.

The petition must include the affidavit of the individual for whom it is filed, stating the individual's name, the individual's residence, that the individual is a candidate and eligible for the office, and that if elected the individual will qualify for the office.

The city clerk shall accept the petition for filing if on its face it appears to have the requisite number of signatures and if it is timely filed.

The city clerk shall deliver all nomination petitions to the county commissioner of elections not later than five o'clock p.m. on the day following the last day on which nomination petitions can be filed. Any person on whose behalf nomination petitions have been filed under this section may withdraw as a candidate by filing a signed statement to that effect as prescribed in section 44.9.

87 Acts, ch 221, §33 HF 600
Former unnumbered paragraph 4 stricken

CHAPTER 384

CITY FINANCE

384.4 Debt service fund.

A city shall establish a debt service fund and shall certify taxes to be levied for the debt service fund in the amount necessary to pay:

1. Judgments against the city, except those authorized by state law to be paid from other funds.
2. Interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all general obligation bonds issued by the city or to pay, or to create a sinking fund to pay, amounts as due on loans received through the Iowa community development loan program.

3. Payments required to be made from the debt service fund under a lease or lease-purchase agreement.

4. Payments required to be made from the debt service fund under a loan agreement.

Moneys pledged or available to service general obligation bonds, and received from sources other than property taxes, must be deposited in the debt service fund.

If a final judgment is entered against a city with a population of five hundred or less for an amount in excess of eighty-eight thousand dollars over and above what is covered by liability insurance, such city may spread the budgeting and payment of that portion not covered by insurance over a period of time not to exceed ten years. Interest shall be paid by the city on the unpaid balance. This paragraph shall only apply to final judgments entered but not fully satisfied prior to March 25, 1976.

87 Acts, ch 103, §5 HF 523
NEW subsection 4

384.21 Joint investment of funds.

A city or a city utility board shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more cities, utility boards, or counties pursuant to a joint investment agreement.

87 Acts, ch 105, §2 HF 324
NEW section

384.24 Definitions.

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

1. "General obligation bond" means a negotiable bond issued by a city and payable from the levy of unlimited ad valorem taxes on all the taxable property within the city through its debt service fund which is required to be established by section 384.4.

2. "City enterprise" means any of the following, including the real estate, fixtures, equipment, accessories, appurtenances, and all property necessary or useful for the operation of any of the following:

a. Parking facilities systems, which may include parking lots and other off-street parking areas, parking ramps and structures on, above, or below the surface, parking meters, both on-street and off-street, and all other fixtures, equipment, accessories, appurtenances, and requisites useful for the successful operation of a parking facilities system.

b. Civic centers or civic center systems, which may include auditoriums, music halls, theatres, sports arenas, armories, exhibit halls, meeting rooms, convention halls, or combinations of these.

c. Recreational facilities or recreational facilities systems, including, without limitation, real and personal property, water, buildings, improvements, and equipment useful and suitable for administering recreation programs, and also including without limitation, zoos, museums, and centers for art, drama, and music, as well as those programs more customarily identified with the term "recreation" such as public sports, games, pastimes, diversions, and amusement, on land or water, whether or not such facilities are located in or as a part of any public park.

d. Port facilities or port facilities systems, including without limitation, real and personal property, water, buildings, improvements and equipment useful and suitable for taking care of the needs of commerce and shipping, and also including without limitation, wharves, docks, basins, piers, quay walls, warehouses, tunnels, belt railway facilities, cranes, dock apparatus, and other machinery necessary for the convenient and economical accommodation and handling of water-craft of all kinds and of freight and passengers.

e. Airport and airport systems.

- f. Solid waste collection systems and disposal systems.
 - g. Bridge and bridge systems.
 - h. Hospital and hospital systems.
 - i. Transit systems.
 - j. Stadiums.
 - k. Housing for the elderly or physically handicapped.
3. "Essential corporate purpose" means:
- a. The opening, widening, extending, grading, and draining the right of way of streets, highways, avenues, alleys, public grounds, and market places, and the removal and replacement of dead or diseased trees thereon; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of traffic control devices; and the acquisition of real estate needed for any of the foregoing purposes.
 - b. The acquisition, construction, improvement, and installation of street lighting fixtures, connections, and facilities.
 - c. The construction, reconstruction, and repair of sidewalks and pedestrian underpasses and overpasses, and the acquisition of real estate needed for such purposes.
 - d. The acquisition, construction, reconstruction, extension, improvement, and equipping of works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams.
 - e. The acquisition, construction, reconstruction, enlargement, improvement, and repair of bridges, culverts, retaining walls, viaducts, underpasses, grade crossing separations, and approaches thereto.
 - f. The settlement, adjustment, renewing, or extension of any part or all of the legal indebtedness of a city, whether evidenced by bonds, warrants, or judgments, or the funding or refunding of the same, whether or not such indebtedness was created for a purpose for which general obligation bonds might have been issued in the original instance.
 - g. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for an essential corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.
 - h. The acquisition, construction, reconstruction, improvement, and extension of works and facilities useful for the control and elimination of any and all sources of air, water, and noise pollution, and the acquisition of real estate needed for such purposes.
 - i. The acquisition, construction, reconstruction, and improvement of all waterways, and real and personal property, useful for the protection or reclamation of property situated within the corporate limits of cities from floods or high waters, and for the protection of property in cities from the effects of flood waters, including the deepening, widening, alteration, change, diversion, or other improvement of watercourses, within or without the city limits, the construction of levees, embankments, structures, impounding reservoirs, or conduits, and the establishment, improvement, and widening of streets, avenues, boulevards, and alleys across and adjacent to the project, as well as the development and beautification of the banks and other areas adjacent to flood control improvements.
 - j. The equipping of fire, police, sanitation, street, and civil defense departments.
 - k. The acquisition and improvement of real estate for cemeteries, and the construction, reconstruction, and repair of receiving vaults, mausoleums, and other cemetery facilities.
 - l. The acquisition of ambulances and ambulance equipment.

m. The reconstruction and improvement of dams already owned.

n. The reconstruction, extension, and improvement of an airport already owned.

a. The rehabilitation and improvement of parks already owned, including the removal, replacement and planting of trees in the parks, and facilities, equipment, and improvements commonly found in city parks.

p. The rehabilitation and improvement of area television translator systems already owned.

q. The aiding in the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403, and all of the purposes set out in section 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 384.26, without limitation on the amount of the bond issue or the size of the city, and the council shall include notice of the right of petition in the notice required under section 384.25, subsection 2.

r. The acquisition, construction, reconstruction, improvement, repair, and equipping of waterworks, water mains, and extensions, and real and personal property, useful for providing potable water to residents of a city.

s. The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the establishment of reserve funds for claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

t. The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures or properties or the abatement of a nuisance.

u. The establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, or for other purposes as may be authorized under chapter 403A.

4. "General corporate purpose" means:

a. The acquisition, construction, reconstruction, extension, improvement, and equipping of city utilities, city enterprises, and public improvements as defined in section 384.37, other than those which are essential corporate purposes.

b. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of community center houses, recreation grounds, recreation buildings, juvenile playgrounds, swimming pools, recreation centers, parks, and golf courses, and the acquisition of real estate therefor.

c. The acquisition, construction, reconstruction, enlargement, improvement, and equipping of city halls, jails, police stations, fire stations, garages, libraries, and hospitals, including buildings to be used for any combination of the foregoing purposes, and the acquisition of real estate therefor.

d. The acquisition, construction, reconstruction, and improvement of dams at the time of acquisition.

e. The removal, replacement, and planting of trees, other than those on public right of way.

f. The acquisition, purchase, construction, reconstruction, and improvement of greenhouses, conservatories, and horticultural centers for growing, storing, and displaying trees, shrubs, plants, and flowers.

g. The acquisition, construction, reconstruction, and improvement of airports at the time of establishment.

h. The undertaking of any project jointly or in co-operation with any other governmental body which, if undertaken by the city alone, would be for a general corporate purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

i. Any other purpose which is necessary for the operation of the city or the health and welfare of its citizens.

5. The "cost" of a project for an essential corporate purpose or general corporate purpose includes construction contracts and the cost of engineering.

architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

87 Acts, ch 103, §6-8 HF 523
 Subsection 3, NEW paragraphs t and u
 Subsection 4, paragraph i amended
 Subsection 5 amended

384.24A Loan agreements.

A city may enter into loan agreements to borrow money for any public purpose in accordance with the following terms and procedures:

1. A loan agreement entered into by a city may contain provisions similar to those sometimes found in loan agreements between private parties, including the issuance of notes to evidence its obligations.

2. A provision of a loan agreement which stipulates that a portion of the payments be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply.

3. The governing body shall follow substantially the same authorization procedure required for the issuance of general obligation bonds issued for the same purpose, to authorize a loan agreement made payable from the debt service fund, or to authorize any loan agreement which would result in the total of scheduled annual payments of principal or interest or both principal and interest of the city due from the general fund of the city in any future year with respect to all loan agreements in force on the date of the authorization, to exceed ten percent of the last certified general fund budget amount. In all other cases, the governing body shall follow substantially the same authorization procedures required for the issuance of general obligation bonds as set out in section 384.25. Chapter 75 is not applicable. A city utility is a separate entity under this section whether it is governed by the council or another governing body.

4. A loan agreement to which a city is a party or in which a city has a participatory interest, is an obligation of a political subdivision of this state for the purposes of chapters 502 and 682, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and any other fiduciaries responsible for the investment of funds.

87 Acts, ch 103, §9 HF 523
 NEW section

384.84 Rates—contracts.

1. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise and, when revenue bonds or pledge orders are issued and outstanding pursuant to this division, shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient at all times to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of principal and interest, and a sufficient portion of net revenues must be pledged for that purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance. All rates or charges for the services of sewer systems, sewage treatment, solid waste collection, solid

waste disposal, or any of these, if not paid as provided by ordinance of council, or resolution of trustees, are a lien upon the premises served by any of these services upon certification to the county treasurer that the rates or charges are due. The lien shall not be less than five dollars. The county treasurer may charge two dollars for each lien certified as an administrative expense, which amount shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor and credited to the county general fund. The lien has equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

2. The governing body of a city utility, combined utility system, city enterprise or combined city enterprise may:

a. By ordinance of the council or by resolution of the trustees published in the same manner as an ordinance, establish, impose, adjust, and provide for the collection of charges for connection to a city utility or combined utility system.

b. Contract for the use of or services provided by a city utility, combined utility system, city enterprise, or combined city enterprise with persons whose type or quantity of use or service is unusual.

c. Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city enterprise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

d. Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise on a wholesale basis.

e. Contract for a period not to exceed forty years with persons and other governmental bodies for the purchase or sale of water, gas, or electric power and energy on a wholesale basis.

3. The portion of cost attributable to the agreement or arbitration awarded under section 357A.21 may be apportioned in whole or in part among water customers within an annexed area.

87 Acts, ch 109, §4 HF 398
NEW subsection 3

CHAPTER 403

URBAN RENEWAL LAW

403.17 Definitions.

The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

1. "Agency" or "urban renewal agency" shall mean a public agency created by section 403.15.

2. "Municipality" shall mean any city in the state.

3. "Public body" shall mean the state or any political subdivision thereof.

4. "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

5. "Mayor" shall mean the mayor of a municipality, or other officer or body having the duties customarily imposed upon the executive head of a municipality.

6. "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

7. "Federal government" shall include the United States or any agency or instrumentality, corporate or otherwise, of the United States.

8. "Slum area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which: By reason of dilapidation, deterioration, age or obsolescence; by reason of inadequate provision for ventilation, light, air, sanitation, or open spaces; by reason of high

density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or which by any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and which is detrimental to the public health, safety, morals or welfare.

9. "*Blighted area*" means an area of a municipality within which the local governing body of the municipality determines that the presence of a substantial number of slum, deteriorated, or deteriorating structures; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; insanitary or unsafe conditions; deterioration of site or other improvements; diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or any combination of these factors; substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, or welfare in its present condition and use. A disaster area referred to in section 403.5, subsection 7, constitutes a "blighted area".

10. "*Urban renewal project*" may include undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, may include the designation and development of an economic development area in an urban renewal area, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal program. The undertakings and activities may include:

- a. Acquisition of a slum area, blighted area, economic development area, or portion of the areas;
 - b. Demolition and removal of buildings and improvements;
 - c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;
 - d. Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan;
 - e. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;
 - f. Acquisition of any other real property in the urban renewal area, where necessary to eliminate unhealthful, insanitary or unsafe conditions, or to lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;
 - g. Sale and conveyance of real property in furtherance of an urban renewal project.
 - h. Expenditure of proceeds of bonds issued before October 7, 1986, for the construction of parking facilities on city blocks adjacent to an urban renewal area.
11. "*Urban renewal area*" means a slum area, blighted area, economic development area, or combination of the areas, which the local governing body designates as appropriate for an urban renewal project.
12. "*Urban renewal plan*" means a plan, as it exists from time to time, for an urban renewal project. The plan shall:
- a. Conform to the general plan for the municipality as a whole except as provided in section 403.5, subsection 7;

b. Be sufficiently complete to indicate the land acquisition, demolition and removal of structures, redevelopment, development, improvements, and rehabilitation proposed to be carried out in the urban renewal area, and to indicate zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

13. "*Real property*" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

14. "*Bonds*" shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

15. "*Obligee*" shall include any bondholder, agents or trustees for any bondholders, or any lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government, when it is a party to any contract with the municipality.

16. "*Person*" shall mean any individual, firm, partnership, corporation, company, association, joint stock association; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity for an individual or such entities.

17. "*Area of operation*" shall mean the area within the corporate limits of the municipality and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city, unless a resolution shall have been adopted by the governing body of such other city declaring a need therefor.

18. "*Board*" or "*commission*" shall mean a board, commission, department, division, office, body or other unit of the municipality.

19. "*Public officer*" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

20. "*Economic development area*" means an area of a municipality designated by the local governing body as appropriate for commercial and industrial enterprises.

87 Acts, ch 104, §5 HF 536
Subsection 10, NEW paragraph h

CHAPTER 404

URBAN REVITALIZATION TAX EXEMPTIONS

404.4 Prior approval of eligibility.

A person may submit a proposal for an improvement project to the governing body of the city to receive prior approval for eligibility for a tax exemption on the project. The governing body shall, by resolution, give its prior approval for an improvement project if the project is in conformance with the plan for revitalization developed by the city. Such prior approval shall not entitle the owner to exemption from taxation until the improvements have been completed and found to be qualified real estate; however, if the proposal is not approved, the person may submit an amended proposal for the governing body to approve or reject.

An application shall be filed for each new exemption claimed. The first application for an exemption shall be filed by the owner of the property with the governing body of the city in which the property is located by February 1 of the assessment year for which the exemption is first claimed, but not later than the

year in which all improvements included in the project are first assessed for taxation, unless, upon the request of the owner at any time, the governing body of the city provides by resolution that the owner may file an application by February 1 of any other assessment year selected by the governing body. The application shall contain, but not be limited to, the following information: The nature of the improvement, its cost, the estimated or actual date of completion, the tenants that occupied the owner's building on the date the city adopted the resolution referred to in section 404.2, subsection 1, and which exemption in section 404.3 or in the different schedule, if one has been adopted, will be elected.

The governing body of the city shall approve the application, subject to review by the local assessor pursuant to section 404.5, if the project is in conformance with the plan for revitalization developed by the city, is located within a designated revitalization area and if the improvements were made during the time the area was so designated. The governing body of the city shall forward for review all approved applications to the appropriate local assessor by March 1 of each year with a statement indicating whether section 404.3, subsection 1, 2, 3 or 4 applies or if a different schedule has been adopted, which exemption from that schedule applies. Applications for exemption for succeeding years on approved projects shall not be required.

87 Acts, ch 156, §1 SF 519
Unnumbered paragraph 2 amended

CHAPTER 421

DEPARTMENT OF REVENUE AND FINANCE

421.1 State board of tax review.

There is hereby established within the department of revenue and finance for administrative and budgetary purposes a state board of tax review for the state of Iowa. The state board of tax review, hereinafter called the state board, shall consist of three members.

The members of the state board shall be qualified electors of the state and shall hold no other elective or appointive public office.

Members of the state board shall serve for six-year staggered terms beginning and ending as provided by section 69.19. A member who is appointed for a six-year term shall not be permitted a successive term.

Members shall be appointed by the governor subject to confirmation by the senate. Appointments to the board shall be bipartisan.

The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. A vacancy on the board shall be filled by appointment by the governor in the same manner as the original appointment.

The members of the state board shall be allowed their necessary travel and expenses while engaged in their official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. They shall organize the board and select one of their members as chairperson.

The place of office of the state board shall be in the office of the tax department in the capitol of the state.

The state board shall hold at least six regular meetings each year, the first of which shall be on the second secular day of July. Special meetings of the state board may be called by the chairperson on five days' notice given to each member. All meetings shall be held at the office of the tax department unless a different place within the state is designated by the state board or in the notice of the meeting.

It shall be the responsibility of the state board to exercise the following general powers and duties:

1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review.

2. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of taxation in carrying out the purposes and objectives of the tax laws.

3. Employ, pursuant to the Iowa merit system, adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

4. Advise and counsel with the director of revenue and finance concerning the tax laws and the rules adopted pursuant to the law; and, upon its own motion or upon appeal by any affected taxpayer, review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue and finance for the assessment and collection of taxes by the department or an order to reassess or to raise assessments to any local assessor and shall affirm, modify, reverse or remand them within sixty days from the date the case is submitted to the board for decision. For an appeal to the board to be valid, written notice must be given to the department within thirty days of the rendering of the decision, order or directive from which the appeal is taken. The director shall certify to the board the record, documents, reports, audits and all other information pertinent to the decision, order or directive from which the appeal is taken.

The affected taxpayer and the department shall be given at least fifteen days' written notice by the board of the date the appeal shall be heard and both parties may be present at such hearing if they desire. The board shall adopt and promulgate, pursuant to chapter 17A, rules for the conduct of appeals by the board. The record and all documents, reports, audits and all other information certified to the board by the director, and hearings held by the board pursuant to the appeal and the decision of the board thereon shall be open to the public notwithstanding the provisions of sections 422.72, subsection 1, and 422.20; except that the board upon the application of the affected taxpayer may order the record and all documents, reports, audits, and all other information certified to it by the director, or so much thereof as it deems necessary, held confidential, if the public disclosure of same would reveal trade secrets or any other confidential information that would give the affected taxpayer's competitor a competitive advantage. Any deliberation of the board in reaching a decision on any appeal shall be confidential.

5. Adopt a long-range program for the state system of tax reform based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the director of revenue and finance.

The state board shall constitute a continuing research commission as to tax matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

6. All of the provisions of section 422.70 shall also be applicable to the state board of tax review.

87 Acts, ch 82, §1 SF 195
Subsection 4, unnumbered paragraph 1 amended

421.17 Powers and duties of director.

In addition to the powers and duties transferred to the director of revenue and finance, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards of assessment and levy in the performance of their official duties, in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied thereon be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to co-operate with them in bringing about a uniform and legal assessment of property as prescribed by law.

The director may order the reassessment of all or part of the property in any taxing district in any year. Such reassessment shall be made by the local assessor according to law under the direction of the director and the cost thereof shall be paid in the same manner as the cost of making an original assessment.

The director shall determine the degree of uniformity of valuation as between the various taxing districts of the state and shall have the authority to employ competent personnel for the purpose of performing this duty.

For the purpose of bringing about uniformity and equalization of assessments throughout the state of Iowa, the director shall prescribe rules relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of actual value for assessment purposes of all property subject to taxation in the state, and such rules shall be adhered to and followed by all assessing authorities.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. The department of revenue and finance shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which the director deems necessary or expedient for the use or guidance of any of the officers over which the director is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Provided, that employees of the department of revenue and finance shall not during their regular hours of employment engage in the preparation of tax returns for individuals, except in connection with a regular audit thereof.

6. To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.

The director shall require all city and county assessors to prepare a quarterly report in the manner and form to be prescribed by the director showing for each warranty deed or contract of sale of real estate, divided between rural and urban, during the last completed quarter the amount of real property transfer tax, the sale price or consideration, and the equalized value at which that property was assessed that year. This report with further information required by the director shall be submitted to the department within sixty days after the end of each quarter. The department shall prepare annual summaries of the records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and the information for the preceding year shall be available for public inspection by May 1.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said

witnesses to produce for examination records, books, papers, and documents relating to any matter which the director shall have the authority to investigate or determine. Provided, however, that no bank or trust company or its officers or employees shall be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or trust company, and was necessary and proper to the discharge of the duty of said bank or trust company in relation to such business transaction. This proviso shall be additional to other provisions of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent therefrom, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the director issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the director or employees of the department may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary; to direct and order any board of review to raise or lower the valuation of the property, real or personal, in any township, city, or taxing district, to order and direct any board of review to raise or lower the valuation of any class or classes of property in any township, city, or taxing district, and generally to make any order or direction to any board of review as to the valuation of any property, or any class of property, in any township, city, county, or taxing district, which in the judgment of the director may seem just and necessary, to the end that all property shall be valued and assessed in the manner and according to the real intent of the law. For the purpose of this paragraph the words "taxing district" include drainage districts and levee districts.

The director may correct errors or obvious injustices in the assessment of any individual property, but the director shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and no order of the director affecting any valuation shall be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which such order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act.

The director may order made effective reassessments or revaluations in any taxing district for any taxing year or years and the director may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district or any area within such taxing district, such orders to be effective in the year specified by the director. For the purpose of this paragraph the words "taxing district" include drainage districts and levee districts.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to

formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in the director's judgment are for the best interest of the state and will eliminate the necessity of any levy for state purposes.

13. To transmit biennially to the governor and to each member and member-elect of the legislature, thirty days before the meeting of the legislature, the report of the director, covering the subject of assessment and taxation, the result of the investigation of the director, recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To publish in pamphlet form the revenue laws of the state and distribute them to the county auditors, assessors, and boards of review.

15. To procure in such manner as the director may determine any information pertaining to the discovery of property which is subject to taxation in this state, and which may be obtained from the records of another state, and may furnish to the board or proper officers of another state, any information pertaining to the discovery of property which is subject to taxation in such state as disclosed by the records in this state.

16. To call upon any state department or institution for technical advice and data which may be of value in connection with the work of assessment and taxation.

17. To certify on January 1 of each year the aggregate of each state tax for each county for said year.

18. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director.

19. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

20. To subpoena from property owners and taxpayers any and all records and documents necessary to assist the department in the determination of the fair market value of industrial real estate. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director.

The provisions of sections 17A.10 to 17A.18 relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review.

21. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt, which is assigned to the department of human services, which the child support recovery unit is attempting to collect on behalf of an individual not eligible as a public assistance recipient, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services, which has accrued through written contract, subrogation, or court judgment and which is in the form of a liquidated sum due and owing for the care, support or maintenance of a child or which is owed to the state for public assistance overpayments which the office of investigations of the department of human services is attempting to collect on behalf of the state. For purposes of this subsection, "public assistance" means aid to dependent children, medical assistance, food stamps, foster care, and state supplementary assistance. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department of revenue and finance shall be satisfied except that no portion of a refund or rebate shall be credited against tax liabilities which are not yet due.

b. Before setoff the child support recovery unit established pursuant to section 252B.2, the foster care recovery unit, and the office of investigations shall obtain and forward to the department of revenue and finance the full name and social security number of the debtor. The department of revenue and finance shall co-operate in the exchange of relevant information with the child support recovery unit as provided in section 252B.9, with the foster care recovery unit, and with the office of investigations. However, only relevant information required by the child support unit, by the foster care recovery unit, or by the office of investigations shall be provided by the department of revenue and finance. The information shall be held in confidence and shall be used for purposes of setoff only.

c. The child support recovery unit, the foster care recovery unit, and the office of investigations shall, at least annually, submit to the department of revenue and finance for setoff the debts described in this subsection, which are at least fifty dollars, on a date to be specified by the department of human services by rule.

d. Upon submission of a claim the department of revenue and finance shall notify the child support recovery unit, the foster care recovery unit, or the office of investigations as to whether the debtor is entitled to a refund or rebate and if so entitled shall notify the unit or office of the amount of the refund or rebate and of the debtor's address on the income tax return.

e. Upon notice of entitlement to a refund or rebate the child support recovery unit, the foster care recovery unit, or the office of investigations shall send written notification to the debtor, and a copy of the notice to the department of revenue and finance, of the unit's or office's assertion of its rights or the rights of an individual not eligible as a public assistance recipient to all or a portion of the debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, the debtor's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application filed with the department within fifteen days from the mailing of the notice of entitlement to a refund or rebate, the child support recovery unit, the foster care recovery unit, or the office of investigations shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of a hearing officer and subsequent appeals shall be taken pursuant to chapter 17A.

f. Upon the request of a debtor or a debtor's spouse to the child support recovery unit, the foster care recovery unit, or the office of investigations, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the unit or office shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance shall upon receipt of the notice divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department of revenue and finance shall, after notice has been sent to the debtor by the child support recovery unit, the foster care recovery unit, or the office of investigations, set off the debt against the debtor's income tax refund or rebate. However, if a debtor has made all current child support or foster care payments in accordance with a court order or an assessment of foster care liability for the twelve months preceding the proposed setoff and has regularly made delinquent child support or foster care payments during those twelve months, the child support or foster care recovery unit shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate.

If a debtor has made all current repayment of public assistance in accordance with a court order or voluntary repayment agreement for the twelve months preceding the proposed setoff and has regularly made delinquent payments during those twelve months, the office of investigations shall notify the department of revenue and finance not to set off the debt against the debtor's income tax refund or rebate. The department shall refund any balance of the income tax refund or rebate to the debtor. The department of revenue and finance shall periodically transfer the amount set off to the child support recovery unit, the foster care recovery unit, or the office of investigations. If the debtor gives timely written notice of intent to contest the claim the department of revenue and finance shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The child support recovery unit, the foster care recovery unit, or the office of investigations shall notify the debtor in writing upon completion of setoff.

22. To employ collection agencies, within or without the state, to collect delinquent taxes, including penalties and interest, administered by the department where the director finds that departmental personnel are unable to collect the delinquent accounts because of a taxpayer's location outside the state or for any other reason. Fees for services, reimbursement, or other remuneration, including attorney fees, paid to collection agencies shall be based upon the amount of tax, penalty, and interest actually collected and shall be paid only after the amount of tax, penalty, and interest is collected. All funds collected must be remitted in full to the department within thirty days from the date of collection from a taxpayer or in a lesser time as the director prescribes. The funds shall be applied toward the taxpayer's account and handled as are funds received by other means. An amount is appropriated from the amount of tax, penalty, and interest actually collected by the collection agency sufficient to pay all fees for services, reimbursement, or other remuneration pursuant to a contract with a collection agency under this subsection. A collection agency entering into a contract with the department for the collection of delinquent taxes pursuant to this subsection is subject to the requirements and penalties of tax information confidentiality laws of this state. All contracts and fees provided for in this subsection are subject to the approval of the governor.

23. To establish and maintain a procedure to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed student or parental loan under chapter 261. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department of revenue and finance shall be satisfied except that a refund or rebate shall not be credited against tax liabilities which are not yet due.

b. Before setoff the college aid commission shall obtain and forward to the department of revenue and finance the full name and social security number of the defaulter. The department of revenue and finance shall cooperate in the exchange of relevant information with the college aid commission.

c. The college aid commission shall, at least annually, submit to the department of revenue and finance for setoff the guaranteed student loan defaults, which are at least fifty dollars, on a date or dates to be specified by the college aid commission by rule.

d. Upon submission of a claim, the department of revenue and finance shall notify the college aid commission whether the defaulter is entitled to a refund or rebate of at least fifty dollars and if so entitled shall notify the commission of the amount of the refund or rebate and of the defaulter's address on the income tax return. Section 422.72, subsection 1, does not apply to this paragraph.

e. Upon notice of entitlement to a refund or rebate, the college aid commission shall send written notification to the defaulter, and a copy of the notice to the department of revenue and finance, of the commission's assertion of its rights to

all or a portion of the defaulter's refund or rebate and the entitlement to recover the amount of the default through the setoff procedure, the basis of the assertion, the defaulter's opportunity to request that a joint income tax refund or rebate be divided between spouses, the defaulter's opportunity to give written notice of intent to contest the claim, and the fact that failure to contest the claim by written application for a hearing before a specified date will result in a waiver of the opportunity to contest the claim, causing final setoff by default. Upon application, the commission shall grant a hearing pursuant to chapter 17A. An appeal taken from the decision of a hearing officer and any subsequent appeals shall be taken pursuant to chapter 17A.

f. Upon the timely request of a defaulter or a defaulter's spouse to the college aid commission and upon receipt of the full name and social security number of the defaulter's spouse, the commission shall notify the department of revenue and finance of the request to divide a joint income tax refund or rebate. The department of revenue and finance shall upon receipt of the notice divide a joint income tax refund or rebate between the defaulter and the defaulter's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department of revenue and finance shall, after notice has been sent to the defaulter by the college aid commission, set off the amount of the default against the defaulter's income tax refund or rebate if both the amount of the default and the refund or rebate are at least fifty dollars. The department shall refund any balance of the income tax refund or rebate to the defaulter. The department of revenue and finance shall periodically transfer the amount set off to the college aid commission. If the defaulter gives written notice of intent to contest the claim, the commission shall hold the refund or rebate until final disposition of the contested claim pursuant to chapter 17A or by court judgment. The commission shall notify the defaulter in writing upon completion of setoff.

24. To enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation, that is substantially equivalent to the setoff procedure in subsection 23. A reciprocal agreement shall also be approved by the college aid commission. The agreement shall authorize the department to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Iowa has a reciprocal agreement and to provide for sending lists of names of Iowa defaulters to the states with which Iowa has a reciprocal agreement for setoff of that state's income tax refunds.

25. To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court as a criminal fine, civil penalty, surcharge, or court costs. The procedure shall meet the following conditions:

a. Before setoff all outstanding tax liabilities collectible by the department shall be satisfied except that no portion of a refund or rebate shall be credited against tax liabilities which are not yet due.

b. Before setoff the clerk of the district court shall obtain and forward to the department the full name and social security number of the debtor. The department shall cooperate in the exchange of relevant information with the clerk. However, only relevant information required by the clerk shall be provided by the department. The information shall be held in confidence and shall be used for purposes of setoff only.

c. The clerk shall, at least quarterly and monthly if practicable, submit to the department for setoff the debts described in this subsection, which are at least fifty dollars.

d. Upon submission of a claim the department shall notify the clerk if the debtor is entitled to a refund or rebate and of the amount of the refund or rebate and the debtor's address on the income tax return.

e. Upon notice of entitlement to a refund or rebate the clerk shall send written notification to the debtor of the clerk's assertion of rights to all or a portion of the

debtor's refund or rebate and the entitlement to recover the debt through the setoff procedure, the basis of the assertion, the opportunity to request that a joint income tax refund or rebate be divided between spouses, and the debtor's opportunity to give written notice of intent to contest the amount of the claim. The clerk shall send a copy of the notice to the department.

f. Upon the request of a debtor or a debtor's spouse to the clerk, filed within fifteen days from the mailing of the notice of entitlement to a refund or rebate, and upon receipt of the full name and social security number of the debtor's spouse, the clerk shall notify the department of the request to divide a joint income tax refund or rebate. The department shall upon receipt of the notice divide a joint income tax refund or rebate between the debtor and the debtor's spouse in proportion to each spouse's net income as determined under section 422.7.

g. The department shall, after notice has been sent to the debtor by the clerk, set off the debt against the debtor's income tax refund or rebate. The department shall transfer at least quarterly and monthly if practicable, the amount set off to the clerk. If the debtor gives timely written notice of intent to contest the amount of the claim, the department shall hold the refund or rebate until final determination of the correct amount of the claim. The clerk shall notify the debtor in writing upon completion of setoff.

26. To provide that in the case of multiple claims to payments filed under subsections 21, 23, 25, and 29 that priority shall be given to claims filed by the child support recovery unit or the foster care recovery unit under subsection 21, next priority shall be given to claims filed by the college aid commission under subsection 23, next priority shall be given to claims filed by the office of investigations under subsection 21, next priority shall be given to claims filed by a clerk of the district court under subsection 25, and last priority shall be given to claims filed by other state agencies under subsection 29. In the case of multiple claims under subsection 29, priority shall be determined in accordance with rules to be established by the director.

27. Administer chapter 99E.

28. Assume the accounting functions of the state comptroller's office.

29. To establish and maintain a procedure to set off against any claim owed to a person by a state agency any liability of that person owed to a state agency, except the setoff procedures provided for in subsections 21, 23, and 25. The procedure shall only apply when at the discretion of the director it is feasible. The procedure shall meet the following conditions:

a. For purposes of this subsection unless the context requires otherwise:

(1) "*State agency*" means a board, commission, department, including the department of revenue and finance, or other administrative office or unit of the state of Iowa. The term "*state agency*" does not include the general assembly, the governor, or any political subdivision of the state, or its offices and units.

(2) "*Department*" means the department of revenue and finance.

(3) The term "*person*" does not include a state agency.

b. Before setoff, a person's liability to a state agency and the person's claim on a state agency shall be in the form of a liquidated sum due, owing, and payable.

c. Before setoff, the state agency shall obtain and forward to the department the full name and social security number of the person liable to it or to whom a claim is owing who is a natural person. If the person is not a natural person, before setoff, the state agency shall forward to the department the information concerning the person as the department shall, by rule, require. The department shall cooperate with other state agencies in the exchange of information relevant to the identification of persons liable to or claimants of state agencies. However, the department shall provide only relevant information required by a state agency. The information shall be held in confidence and used for the purpose of setoff only. Section 422.72, subsection 1, does not apply to this paragraph.

d. Before setoff, a state agency shall, at least annually, submit to the department the information required by paragraph "c" along with the amount of each person's liability to and the amount of each claim on the state agency. The department may, by rule, require more frequent submissions.

e. Before setoff, the amount of a person's claim on a state agency and the amount of a person's liability to a state agency shall be at least fifty dollars.

f. Upon submission of an allegation of liability by a state agency, the department shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person's entitlement and of the person's last address known to the department. Section 422.72, subsection 1, does not apply to this paragraph.

g. Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the department. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

h. Upon the timely request of a person liable to a state agency or of the spouse of that person and upon receipt of the full name and social security number of the person's spouse, a state agency shall notify the department of the request to divide a jointly or commonly owned right to payment. Any jointly or commonly owned right to payment is rebuttably presumed to be owned in equal portions by its joint or common owners.

i. The department shall, after the state agency has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The department shall refund any balance of the amount to the person. The department shall periodically transfer amounts set off to the state agencies entitled to them. If a person liable to a state agency gives written notice of intent to contest an allegation, a state agency shall hold a refund or rebate until final disposition of the allegation. Upon completion of the setoff, a state agency shall notify in writing the person who was liable.

j. The department's existing right to credit against tax due or to become due under section 422.73 is not to be impaired by a right granted to or a duty imposed upon the department or other state agency by this subsection. This subsection is not intended to impose upon the department any additional requirement of notice, hearing, or appeal concerning the right to credit against tax due under section 422.73.

30. Under substantive rules established by the director, the department shall seek reimbursement from other state agencies to recover its costs for setting off liabilities.

87 Acts, ch 199, §4, 5 HF 334

1987 amendment to subsection 26, and new subsections 29 and 30 take effect July 1, 1988; 87 Acts, ch 199, §11 HF 334

Subsection 26 amended

NEW subsections 29 and 30

CHAPTER 422

INCOME, CORPORATION, SALES AND BANK TAX

422.4 Definitions controlling division.

For the purpose of this division and unless otherwise required by the context:

1. The words "*taxable income*" mean the net income as defined in section 422.7 minus the deductions allowed by section 422.9, in the case of individuals; in the

case of estates or trusts, the words "taxable income" mean the taxable income (without a deduction for personal exemption) as computed for federal income tax purposes under the Internal Revenue Code of 1954, but with the adjustments specified in section 422.7 plus the Iowa income tax deducted in computing said taxable income and minus federal income taxes as provided in section 422.9.

2. The word "*person*" includes individuals and fiduciaries.

3. The words "*income year*" mean the calendar year or the fiscal year upon the basis of which the net income is computed under this division.

4. The words "*tax year*" mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this division.

a. If a taxpayer has made the election provided by section 441, subsection "*f*", of the Internal Revenue Code of 1954, "*tax year*" means the annual period so elected, varying from fifty-two to fifty-three weeks.

b. If the effective date or the applicability of a provision of this division is expressed in terms of a tax year beginning, including or ending with reference to a specified date which is the first or last day of a month, a tax year described in paragraph "*a*" of this subsection shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of the tax year or as ending with the last day of the calendar month ending nearest to the last day of the tax year.

c. This subsection is effective for tax years ending on or after December 14, 1975.

5. The words "*fiscal year*" mean an accounting period of twelve months, ending on the last day of any month other than December.

6. The word "*fiduciary*" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

7. The word "*paid*", for the purposes of the deductions under this division, means "paid or accrued" or "paid or incurred", and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this division. The term "received", for the purpose of the computation of net income under this division, means "received or accrued", and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this division.

8. The word "*resident*" applies only to individuals and includes, for the purpose of determining liability to the tax imposed by this division upon or with reference to the income of any tax year, any individual domiciled in the state, and any other individual who maintains a permanent place of abode within the state.

9. The words "*foreign country*" mean any jurisdiction other than one embraced within the United States. The words "United States", when used in a geographical sense, include the states, the District of Columbia, and the possessions of the United States.

10. The word "*individual*" means a natural person; and where an individual is permitted to file as a corporation, under the provisions of the Internal Revenue Code of 1954, such fictional status shall not be recognized for purposes of this chapter, and such individual's taxable income shall be computed as required under the provisions of the Internal Revenue Code of 1954 relating to individuals not filing as a corporation, with the adjustments allowed by this chapter.

11. The term "*head of household*" shall have the same meaning as provided by the Internal Revenue Code of 1954.

12. The word "*nonresident*" applies only to individuals, and includes all individuals who are not "residents" within the meaning of subsection 8 hereof.

13. The term "*withholding agent*" means any individual, fiduciary, estate, trust, corporation, partnership or association in whatever capacity acting and

including all officers and employees of the state of Iowa, or any municipal corporation of the state of Iowa and of any school district or school board of the state, or of any political subdivision of the state of Iowa, or any tax-supported unit of government that is obligated to pay or has control of paying or does pay to any resident or nonresident of the state of Iowa or the resident's or nonresident's agent any wages that are subject to the Iowa income tax in the hands of such resident or nonresident, or any of the above-designated entities making payment or having control of making such payment of any taxable Iowa income to any nonresident. The term "*withholding agent*" shall also include an officer or employee of a corporation or association, or a member or employee of a partnership, who as such officer, employee, or member has the responsibility to perform an act under section 422.16 and who subsequently knowingly violates the provisions of section 422.16.

14. The term "*wages*" shall have the same meaning as provided by the Internal Revenue Code of 1954.

15. The term "*employer*" shall mean and include those who have a right to exercise control as to how, when, and where services are to be performed.

16. The term "*other person*" shall mean that person or entity properly empowered to act in behalf of an individual payee and shall include authorized agents of such payees whether they be individuals or married couples.

17. a. "*Annual inflation factor*" means an index, expressed as a percentage, determined by the department each year to reflect the purchasing power of the dollar as a result of inflation during the preceding calendar year. For the 1981 and subsequent calendar years, "*annual inflation factor*" means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined to reflect the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual inflation factor, the department shall use the annual percent change, but not less than zero percent, in the implicit price deflator for the gross national product computed for the whole calendar year or for the second quarter of the calendar year, in the case of the annual inflation factor for the 1981 and subsequent calendar years, by the bureau of economic analysis of the United States department of commerce and shall add two-fourths for the 1980 and subsequent calendar years of that percent change to one hundred percent. The annual inflation factor for the 1979 calendar year is one hundred two point three percent. The annual inflation factor and the cumulative inflation factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual inflation factor shall not be less than one hundred percent.

b. "*Cumulative inflation factor*" means the product of the annual inflation factor for the 1978 calendar year and all annual inflation factors for subsequent calendar years as determined pursuant to this subsection. The cumulative inflation factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual inflation factor has been determined.

c. The annual inflation factor for the 1978 calendar year is one hundred percent. Notwithstanding the computation of the annual inflation factor under paragraph "a", the annual inflation factor for the 1987 calendar year is one hundred percent.

d. Notwithstanding the computation of the annual inflation factor under paragraph "a" of this subsection, the annual inflation factor is one hundred percent for any calendar year in which the unobligated state general fund balance on June 30 as certified by the director of revenue and finance by September 10 of the fiscal year beginning in that calendar year is less than sixty million dollars. However, for the 1981 and subsequent calendar years, the annual inflation factor is one hundred percent for any calendar year if the unobligated state general fund balance on June 30 of the calendar year preceding the calendar year for which the

factor is determined, as certified by the director of revenue and finance by October 10, is less than sixty million dollars.

18. For purposes of section 422.3, subsection 5, the Internal Revenue Code of 1954 shall be interpreted to include the provisions of Pub. L. No. 98-4.

19. The definition of the Internal Revenue Code of 1954 in section 422.3, subsection 5, shall be interpreted to include provisions of the Tax Reform Act of 1986, Pub. L. No. 99-514 which amended the Internal Revenue Code of 1954, unless the context otherwise requires.

20. "Internal Revenue Code of 1986" means the Internal Revenue Code of 1954 as amended by the Tax Reform Act of 1986, Pub. L. No. 99-514.

87 Acts, ch 1 Ex, §1 SF 523; 87 Acts, ch 1, 2nd Ex, §1 HF 689
Subsections 19 and 20, effective October 28, 1987, are retroactive to January 1, 1987, for tax years beginning in the 1987 calendar year only; 87 Acts, ch 1, 2nd Ex, §16, 17 HF 689

Subsection 17, paragraph c amended
NEW subsections 19 and 20
See Code editor's note

422.5 Tax imposed—exclusions—alternative minimum tax.

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On the first one thousand dollars of taxable income, or any part thereof, one-half of one percent.

b. On the second thousand dollars of taxable income, or any part thereof, one and one-fourth percent.

c. On the third thousand dollars of taxable income, or any part thereof, two and three-fourths percent.

d. On the fourth thousand dollars of taxable income, or any part thereof, three and one-half percent.

e. On the fifth, sixth, and seventh thousand dollars of taxable income, or any part thereof, five percent.

f. On the eighth and ninth thousand dollars of taxable income, or any part thereof, six percent.

g. On the tenth through the fifteenth thousand dollars of taxable income or any part thereof, seven percent.

h. On the sixteenth through the twentieth thousand dollars of taxable income or any part thereof, eight percent.

i. On the twenty-first through the twenty-fifth thousand dollars of taxable income or any part thereof, nine percent.

j. On the twenty-sixth through the thirtieth thousand dollars of taxable income or any part thereof, ten percent.

k. On the thirty-first through the fortieth thousand dollars of taxable income or any part thereof, eleven percent.

l. On the forty-first through the seventy-fifth thousand dollars of taxable income or any part thereof, twelve percent.

m. On all taxable income over seventy-five thousand dollars, thirteen percent.

n. The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs "a" through "m" by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident's net income allocated to Iowa, as determined in section 422.8, subsection 2, is the numerator and the nonresident's total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

a. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in paragraphs "a"

through "n" or the state alternative minimum tax equal to nine percent of the state alternative minimum taxable income of the taxpayer as computed under this paragraph.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(8) and (a)(11), of the Internal Revenue Code of 1954. In the case of an estate or trust, the items of tax preference shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director. For purposes of computing the items of tax preference, the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt or from the sale or exchange of property as a result of actual notice of foreclosure shall not be taken into account in computing net capital gain if all of the following conditions are met:

(a) The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

(b) Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded seventy-five percent as computed under generally accepted accounting practices.

(c) The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars.

In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred, within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange, without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is reasonable belief that the creditor can force a sale of the property.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or an unmarried head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3.

The state alternative minimum tax of a taxpayer whose items of tax preference include the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a

nonresident, including a nonresident estate or trust, or an individual, estate or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10, 422.11, 422.11A and 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, and tax preference items attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 and all tax preference items. In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items under section 57 of the Internal Revenue Code of 1954 bear to the combined preference items of both spouses.

*1A. In lieu of subsection 1, a tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On all taxable income from zero through one thousand dollars, four-tenths of one percent.

b. On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, eight-tenths of one percent.

c. On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and seven-tenths percent.

d. On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, five percent.

e. On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and eight-tenths percent.

f. On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, seven and two-tenths percent.

g. On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, seven and fifty-five hundredths percent.

h. On all taxable income exceeding thirty thousand dollars but not exceeding forty-five thousand dollars, eight and eight-tenths percent.

i. On all taxable income exceeding forty-five thousand dollars, nine and ninety-eight hundredths percent.

j. The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs "a" through "i" by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident's net income allocated to Iowa, as determined in section 422.8, subsection 2, is the numerator and the nonresident's total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

k. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in paragraphs "a" through "j" or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer as computed under this paragraph.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, except for the net capital gain deduction, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the

Internal Revenue Code of 1986, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code of 1986, and add losses as required by section 58 of the Internal Revenue Code of 1986. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or an unmarried head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph subdivision (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph subdivision (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph subdivision (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10, 422.11, 422.11A, and 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately

on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

2. However, the tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is five thousand dollars or less; but in the event that the payment of tax under this division would reduce the net income to less than five thousand dollars, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of five thousand dollars. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. If the combined net income of a husband and wife exceeds five thousand dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of five thousand dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding five thousand dollars or the person claiming the dependent and the person's spouse have combined net income exceeding five thousand dollars.

*However, for married persons filing jointly or filing separately on a combined return, unmarried heads of household, and surviving spouses, references in this subsection and subsections 6 and 10 to five thousand dollars shall be interpreted to mean seven thousand five hundred dollars. In addition, if the married persons', filing jointly or filing separately on a combined return, unmarried head of household's, or surviving spouse's net income exceeds seven thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of seven thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife.

3. A resident of Iowa who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, section 101, for more than six continuous months, shall not include any income received for such service performed on or after January 1, 1969, or prior to January 1, 1977, in computing the tax imposed by this section.

4. The tax herein levied shall be computed and collected as hereinafter provided.

5. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

6. A person who is disabled, is sixty-two years of age or older or is the surviving spouse of an individual or survivor having an insurable interest in an individual who would have qualified for the exemption under this paragraph for this tax year and receives one or more annuities from the United States civil service retirement and disability trust fund, and whose net income, as defined in section 422.7, is sufficient to require that the tax be imposed upon it under this section, may determine final taxable income for purposes of imposition of the tax by excluding the amount of annuities received from the United States civil service retirement and disability trust fund, which are not already excluded in determining net income, as defined in section 422.7, up to a maximum each tax year of five thousand five hundred dollars for a person who files a separate state income tax return and eight thousand dollars total for a husband and wife who file a joint

state income tax return. However, a surviving spouse who is not disabled or sixty-two years of age or older can only exclude the amount of annuities received as a result of the death of the other spouse. The amount of the exemption shall be reduced by the amount of any social security benefits received. For the purpose of this section, the amount of annuities received from the United States civil service retirement and disability trust fund taxable under the Internal Revenue Code of 1954 shall be included in net income for purposes of determining eligibility under the five thousand dollar or less exclusion.

7. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs "a" through "m" of this section, and each dollar amount specified in this section as the maximum amount of annuities received which may be excluded in determining final taxable income, by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

8. Income of an individual which is excluded from gross income under the Internal Revenue Code of 1954 as a result of the provisions of the Hostage Relief Act of 1980, 94 stat. 1967, shall not be included as income in computing the tax imposed by this section.

9. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer's assets exceed the taxpayer's liabilities.

10. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of 1954 to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under the five thousand dollar or less exclusion.

87 Acts, ch 1Ex, §2 SF 523; 87 Acts, ch 214, §2 HF 675; 87 Acts, ch 1, 2nd Ex, §2, 3 HF 689

1987 amendment striking subsection 1, paragraph c, subparagraph (4) is retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §31 SF 523

1987 amendment to subsection 2 is retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 214, §12 HF 675

*New subsection 1A and subsection 2, new unnumbered paragraph 2, effective October 28, 1987, are retroactive to January 1, 1987, for tax years beginning in the 1987 calendar year only; references to section 422.5, subsection 1, shall be interpreted to mean the corresponding provision of section 422.5, subsection 1A; 87 Acts, ch 1, 2nd Ex, §14, 16, 17 HF 689

See Code editor's note to §422.4

Subsection 1, paragraph c, subparagraph (4) stricken

NEW subsection 1A

Subsection 2 amended

Subsection 2, NEW unnumbered paragraph 2

422.7 "Net income"—how computed.

The term "net income" means the adjusted gross income as properly computed for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code of 1954.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract installment payments received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan when the commuted value of said installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes.

5. Add the amount by which the basis of qualified depreciable property is required to be increased for depreciation purposes under the Internal Revenue Code Amendments Act of 1964 to the extent that such amount equals the net amount of the special deduction allowed on the basis of the amount by which the depreciable basis of such qualified property was required to be reduced for depreciation purposes under the Internal Revenue Code Amendments Act of 1962. The "net amount of the special deduction" shall be computed by taking the sum of the amounts by which the basis of qualified property was required to be decreased for depreciation purposes for the years 1962 and 1963 and subtracting from it the sum of the amounts by which the basis of such property was required to be increased, prior to 1964, for depreciation or disposition purposes under the Internal Revenue Code Amendments Act of 1962.

6. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code of 1954. The disability income exclusion provided in section 105(d) of the Internal Revenue Code of 1954, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.

7. Add to the taxable income of trusts, that portion of trust income excluded from federal taxable income under section 641(c) of the Internal Revenue Code of 1954.

8. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code of 1954 and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code of 1954.

9. Subtract the amount of the jobs tax credit allowable for the tax year under section 51 of the Internal Revenue Code of 1954 to the extent that the credit increased federal adjusted gross income.

10. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for state income tax purposes, shall include in net income any unemployment compensation benefits received subject to the limitations for joint federal income tax return filers provided in section 85 of the Internal Revenue Code of 1954.

11. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code of 1954 to the extent that the credit increased federal adjusted gross income.

12. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for state income tax purposes, may avail themselves of the dividend exclusion provisions of section 116(a) of the Internal Revenue Code of 1954 and shall compute the dividend exclusion subject to the limitations for joint federal income tax return filers provided by section 116(a) of the Internal Revenue Code of 1954.

13. The exclusion of interest income provided by section 128 of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for tax years beginning on or after January 1, 1981 and before January 1, 1984.

14. The deduction for a married couple where both persons are wage earners which is provided by section 221 of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for tax years beginning on or after January 1, 1982.

15. The deduction allowed under section 162(h) of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for any tax year beginning on or before December 31, 1980. The deduction allowed under section 604 of the Tax Reform Act of 1976, as amended up to and including December 31, 1980, is allowable in computing Iowa net income, for tax years beginning on or before December 31, 1980, under provisions effective for the year for which the return is made. The deduction allowed under section 162(h) of the Internal Revenue Code of 1954 is not applicable in computing Iowa net income for any tax year beginning on or after January 1, 1981. The deduction allowed under section 604 of the Tax Reform Act of 1976, as amended up to and including December 31, 1980, is allowable in computing Iowa net income for tax years beginning on or after January 1, 1981. The maximum allowable deduction, other than for travel expense, shall not exceed fifty dollars per day, where the taxpayer elects on the Iowa return to be governed by section 604 of the Tax Reform Act of 1976, as amended up to and including December 31, 1980, unless the taxpayer itemized expenses.

16. Add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code of 1954 to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code of 1954. Entitlement to depreciation on any property included in a sale-leaseback agreement shall be determined under the Internal Revenue Code of 1954, excluding section 168(f)(8) in making the determination.

*16A. Notwithstanding any other provision, add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code of 1954 for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code of 1954 as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code of 1954 as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

17. Subtract the amount of unemployment compensation to be included in Iowa net income for any tax year. Add back the amount of unemployment compensation computed under section 85 of the Internal Revenue Code of 1954, as amended up to and including December 31, 1981. This subsection is effective only for the tax year beginning on or after January 1, 1982 and before December 31, 1982.

18. If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing

the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

a. A handicapped individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 246, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

The amount of the additional deduction is equal to fifty percent of the wages paid to individuals named in paragraphs "a", "b", and "c" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the division of job service of the department of employment services, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

For purposes of this subsection, "*physical or mental impairment*" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, "*small business*" means small business as defined in section 220.1, subsection 28, except that it shall also include the operation of a farm.

19. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall include in net income any social security benefits or tier 1 railroad retirement benefits received to the same extent as those benefits are taxable on the taxpayer's joint federal return for that year under section 86 of the Internal Revenue Code of 1954. The benefits included in net income must be

allocated between the spouses in the ratio of the social security benefits or tier 1 railroad retirement benefits received by each spouse to the total of these benefits received by both spouses.

20. Subtract the unemployment compensation benefits for tax years beginning on January 1, 1979 to the extent those benefits had been included in net income on a return filed before January 1, 1981 and were excluded from income under Act section 1075 of the Tax Reform Act of 1984. Notwithstanding the statute of limitations specified in section 422.73, subsection 2, taxpayers who would be barred from claiming a refund or credit from an overpayment resulting from the change made by Act section 1075 of the Tax Reform Act of 1984 are entitled to receive a refund or credit if they file a claim with the department on or before June 30, 1986.

21. Add the four percent of the basic salary of a judge, who is a member of the judicial retirement system established in chapter 602, article 9, which is exempt from federal income tax under the Internal Revenue Code of 1954.

22. Add the combined net losses from passive farming activity in excess of twenty-five thousand dollars that offset income from other sources. Net losses under section 165 of the Internal Revenue Code of 1954, exclusive of net gains incurred passively from the operation of a farming business, as defined in section 464(e) of the Internal Revenue Code of 1954, are to be combined from businesses, rents, partnerships, subchapter S corporations, estates or trusts except losses under sections 1211 and 1231 of the Internal Revenue Code of 1954. For purposes of this subsection the following apply:

a. "*Passive activity*" means an activity where the taxpayer or a member of the taxpayer's family as defined in section 2032A(e)(2) of the Internal Revenue Code of 1954 does not materially participate in the activity or provide substantial personal services to the farming business. A taxpayer who is retired or disabled as described in section 2032A(b)(4) of the Internal Revenue Code of 1954 or is a surviving spouse as described in section 2032A(b)(5) shall be treated as materially participating in the farming business.

b. A loss from an activity that is disallowed under this subsection shall be treated as a deduction allowable to that activity in the first succeeding tax year.

*23. Add the amount of intangible drilling and development costs optionally deducted in the year paid or incurred as described in section 57(a)(2) of the Internal Revenue Code of 1954. This amount may be recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

*24. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code of 1954.

25. Subtract the income or loss resulting from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure if all of the following conditions are met:

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded ninety percent as computed under generally accepted accounting practices.

c. The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars. In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of

foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

26. In determining the taxpayer's net income, the adjusted gross income computed for federal tax purposes shall be adjusted to reflect the following:

a. *Business meals, travel, and entertainment.* Deductions for expenses incurred for meals, travel, and entertainment for business purposes shall be determined under sections 170 and 274 of the Internal Revenue Code in effect on January 1, 1987 and all other provisions of the Internal Revenue Code in effect on January 1, 1987 relating to such deductions.

b. *Depreciation.* Deductions for depreciation for property used for business purposes shall be determined under sections 46, 167, 178, 179, 280, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of the Internal Revenue Code in effect on January 1, 1987 and all other provisions of the Internal Revenue Code in effect on January 1, 1987 relating to such deductions.

c. *Capitalization rules.* Capitalization rules for inventory, construction, and development costs as they relate to business activities shall be determined under sections 48, 263A, 312, 471, 267, 447, and 464 of the Internal Revenue Code in effect on January 1, 1987 and all other provisions of the Internal Revenue Code in effect on January 1, 1987 relating to such capitalization rules.

d. *Passive investment activities.* Deductions for passive investment activities shall be determined under section 469 of the Internal Revenue Code in effect on January 1, 1987 and all other provisions of the Internal Revenue Code in effect on January 1, 1987 relating to passive investment activities.

e. *Long-term contracts.* Rules for determining the amount of deductions for long-term contracts relating to business activities shall be determined under sections 460 and 804 of the Internal Revenue Code in effect on January 1, 1987 and all other provisions of the Internal Revenue Code in effect on January 1, 1987 relating to such long-term contracts.

f. *Discharge of indebtedness.* Treatment of income of a farmer resulting from the discharge of the farmer's indebtedness shall be determined under section 108(g) of the Internal Revenue Code in effect on January 1, 1987.

*27. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code of 1986 and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code of 1986.

87 Acts, ch 1Ex, §3 SF 523; 87 Acts, ch 1, 2nd Ex, §4-6 HF 689

Subsection 26 is retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §31 SF 523

*1987 amendments to subsections 23 and 24, and new subsections 16A and 27, effective October 28, 1987, are retroactive to January 1, 1987, for tax years beginning in the 1987 calendar year only; subsections 10, 12, 14, 15, 22, and 26 do not apply; 87 Acts, ch 1, 2nd Ex, §13, 16, 17 HF 689

See Code editor's note to §422.4

NEW subsection 16A

Subsections 23 and 24 amended

NEW subsection 26

NEW subsection 27

422.8 Allocation of income earned in Iowa and other states.

References in this section and in any other provision of law to section 422.5, subsection 1, shall be interpreted to mean the corresponding provision of section 422.5, subsection 1A; effective October 28, 1987, retroactive to January 1, 1987, for tax years beginning in the 1987 calendar year only; 87 Acts, ch 1, 2nd Ex, §14, 16, 17 HF 689.

422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

*1. An optional standard deduction of fifteen percent of the net income after deduction of federal income tax, not to exceed one thousand two hundred dollars for a married person who files separately, one thousand two hundred dollars for a single person or three thousand dollars for a husband and wife who file a joint return, a surviving spouse as defined in section 2 of the Internal Revenue Code of 1954, or an unmarried head of household as defined in the Internal Revenue Code of 1954 or an optional standard deduction after deduction of federal income tax equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or an unmarried head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax.

A taxpayer who claims the optional standard deduction under this subsection may, after claiming the optional standard deduction, claim the direct charitable contribution as allowed and subject to the same limitations provided under section 170(i) of the Internal Revenue Code of 1954 for tax years ending on or before December 31, 1986. However, the deduction shall be computed as provided under section 170(i) of the Internal Revenue Code of 1954 as applied to tax year 1984. Married taxpayers who have filed a joint federal return and who elect to file separate returns or separately on a combined state return must allocate their allowable charitable deduction to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Taxpayers affected by the allocation provisions of section 422.8 shall be permitted a deduction in the amount as is fairly and equitably allocable to Iowa under rules prescribed by the director.

*2. The total of contributions, interest, taxes, medical expense, nonbusiness losses and miscellaneous expenses; and moving expenses; deductible for federal income tax purposes under the Internal Revenue Code of 1954, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the natural mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a child-placing agency licensed under chapter 238 or by a person making an independent placement according to the provisions of chapter 600.

d. Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

e. Subtract the adoption deduction permitted under section 222 of the Internal Revenue Code of 1954.

f. Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or

grandparent of the taxpayer or the taxpayer's spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239.

g. Add the amount the taxpayer has paid to others, not to exceed one thousand dollars for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the United States Civil Rights Act of 1964 and chapter 601A. As used in this lettered paragraph, "textbooks" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. The deduction in this paragraph does not apply to a taxpayer whose adjusted gross income, as properly computed for federal tax purposes, is forty-five thousand dollars or more. In the case where the taxpayer is married, whether filing jointly or separately, the deduction does not apply if the combined adjusted gross income of the taxpayer and spouse is forty-five thousand dollars or more.

As used in this lettered paragraph, "tuition" means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

3. If after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8 and the deductions allowable in this section subject to the modifications provided in section 172(d) of the Internal Revenue Code of 1954, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years or to the taxable year in which the individual first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward fifteen taxable years.

c. If the election under section 172(b)(3)(C) of the Internal Revenue Code of 1954 is made, the Iowa net operating loss shall be carried forward fifteen taxable years.

4. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

*6. The taxpayer may recompute the taxpayer's income tax liability for the tax year by subtracting from the taxpayer's taxable income, as computed without regard to this subsection, sixty percent of the net capital gain as computed in section 1202 of the Internal Revenue Code of 1986 in effect for tax years beginning in the 1986 calendar year. For purposes of determining the amount to be subtracted, the net capital gain shall not exceed seventeen thousand five hundred dollars. Married taxpayers who elect separate filing on a combined return for state tax purposes are treated as one taxpayer and the amount of net capital gain to be used to determine the total amount to be subtracted by them shall not exceed seventeen thousand five hundred dollars in the aggregate. Married taxpayers who file jointly or separately on a combined return shall prorate the seventeen thousand five hundred dollar limitation between them based on the ratio of each spouse's net capital gain to the total net capital gain of both spouses. In the case of married taxpayers filing separate returns, the amount of net capital gain to be used to determine the amount to be subtracted by each spouse shall not exceed eight thousand seven hundred and fifty dollars. To the extent that the adjusted gross income reflects capital gain treatment for sales of dairy cattle made between January 1, 1987, and September 1, 1987, under the federal milk production termination program, the capital gains from such sales shall not be used in computing net capital gain for purposes of this subsection. Any income or loss resulting from the forfeiture, transfer, or sale or exchange described in section 422.7, subsection 25, shall not be used in computing net capital gain for purposes of this subsection.

In order for the taxpayer to claim this capital gain deduction, the taxpayer must completely fill out the return, determine the taxpayer's income tax liability without this deduction, and pay the amount of tax that is owed. The taxpayer shall recompute the taxpayer's income tax liability, with this deduction, on a special return. This special return shall be filed with the regular return and constitutes a claim for refund of the difference between the amount of tax the taxpayer paid as determined without the net capital gain deduction and the amount of tax determined with the net capital gain deduction. In recomputing the taxpayer's alternative minimum tax liability, the amount of net capital gain deduction taken shall be treated as a tax preference item for purposes of the recomputation only.

The provisions of this subsection shall not affect the amount of the taxpayer's checkoff to the Iowa election campaign fund under section 56.18, the checkoff for the fish and game protection fund in section 107.16, the credits from tax provided in sections 422.10, 422.11A, and 422.12 and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns, or the amount of the taxpayer's school district income surtax liability under section 442.15 as these items were properly computed or claimed on taxpayers' returns.

For the tax year the total amount of refund claims that shall be paid shall not exceed eight million dollars. If the total amount of the claims for refund does exceed that amount, each claim for refund shall be paid on a pro rata basis so that the total amount paid for the tax year does not exceed eight million dollars. In the case where refund claims are not paid in full, the amount of the refund to which the taxpayer is entitled under this subsection is the pro rata amount that was paid and the taxpayer is not entitled to a refund for the unpaid portion and is not entitled to carry that amount forward or backward to another tax year. Taxpayers shall not use refunds as estimated payments for the succeeding tax year. Taxpayers whose tax years begin on January 1 must file their refund claims by

October 31, 1988, to be eligible for refunds. Taxpayers whose tax years begin on a date in 1987 other than January 1 must file their refund claims by the end of the sixth month following the end of their tax years. The department shall determine on February 1, 1989, if the total amount of claims for refund exceeds eight million dollars for the tax year. Notwithstanding any other provision, interest shall not be due on any refund claims that are paid by February 28, 1989. If the claim is not payable on February 28, 1989, because the taxpayer is a fiscal year filer, then the amount of the claim allowed shall be in the same ratio as refund claims available on February 1, 1989. These claims shall be funded by moneys appropriated for payment of refunds of individual income tax.

87 Acts, ch 233, §493 SF 511; 87 Acts, ch 1, 2nd Ex, §7-9 HF 689

Subsection 2, paragraph g is retroactive to January 1, 1987, and applies to tax years beginning on or after that date; 87 Acts, ch 233, §498 SF 511

*1987 amendments to subsection 1, unnumbered paragraph 1, subsection 2, unnumbered paragraph 1, and new subsection 6, effective October 28, 1987, are retroactive to January 1, 1987, for tax years beginning in the 1987 calendar year only; subsection 2, paragraph e, does not apply; 87 Acts, ch 1, 2nd Ex, §13, 16, 17 HF 689

See Code editor's note to §422.4

Subsection 1, unnumbered paragraph 1 amended

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, NEW paragraph g

NEW subsection 6

422.10 Research activities credit.

*The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state. For individuals, the credit shall equal six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. For purposes of this section, an individual may claim a research credit for qualifying research expenditures incurred by a partnership, subchapter S corporation, and estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, subchapter S corporation, or estate or trust. For purposes of this section, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 30 of the Internal Revenue Code of 1954, in effect on January 1, 1985, or which would be allowable under section 41 of the Internal Revenue Code of 1986.

Any credit in excess of the tax liability less personal exemption and child care credits provided in section 422.12 for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

87 Acts, ch 1, 2nd Ex, §10

*1987 amendment to unnumbered paragraph 1, effective October 28, 1987, is retroactive to January 1, 1987, for tax years beginning in the 1987 calendar year only; 87 Acts, ch 1, 2nd Ex, §16, 17 HF 689

Unnumbered paragraph 1 amended

422.12 Deductions from computed tax.

There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

1. A personal exemption credit in the following amounts:
 - a. For an estate or trust, a single individual, or a married person filing a separate return, fifteen dollars.
 - b. For a head of household, or a husband and wife filing a joint return, thirty dollars.
 - c. For each dependent, an additional ten dollars. As used in this section, the term "dependent" shall have the same meaning as provided by the Internal Revenue Code of 1954.

d. For a single individual, husband, wife or head of household, an additional exemption of fifteen dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

e. For a single individual, husband, wife or head of household, an additional exemption of fifteen dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this paragraph, an individual is blind only if the individual's central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual's visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

f. For tax years beginning on or after January 1, 1979 and for each of the next four succeeding tax years, the amount of the personal exemption credits provided in this subsection shall be increased in the amount of one dollar for each tax year, except that the personal exemption credit allowed under paragraph "b" of this subsection shall be increased in the amount of two dollars for each tax year. The personal exemption credits determined pursuant to this paragraph for tax years beginning on or after January 1, 1983 shall continue for succeeding tax years.

2. A child and dependent care credit equal to forty-five percent of the federal child and dependent care credit provided in section 21 of the Internal Revenue Code of 1954.

Married taxpayers electing to file separate returns or filing separately on a combined return must allocate the child and dependent care credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Taxpayers affected by the allocation provisions of section 422.8 shall be permitted a deduction for the credit only in the amount fairly and equitably allocable to Iowa under rules prescribed by the director.

3. For those who do not itemize their deduction, a tuition credit equal to five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the United States Civil Rights Act of 1964 and chapter 601A. As used in this subsection, "*textbooks*" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship, and does not include books or materials for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under section 422.10 through 422.12 shall be deducted before the tuition credit under this subsection. The credit in this subsection does not apply to a taxpayer whose adjusted gross income, as properly computed for federal tax purposes, is forty-five thousand dollars or more. In the case where the taxpayer is married, whether filing jointly or separately, the credit does not apply if the combined adjusted gross income of the taxpayer and spouse is forty-five thousand dollars or more.

As used in this subsection, "*tuition*" means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines,

or worship, and which do not relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

4. For the purpose of this section, the determination of whether an individual is married shall be made as of the close of the individual's tax year unless the individual's spouse dies during the individual's tax year, in which case the determination shall be made as of the date of the spouse's death. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered married.

87 Acts, ch 233, §494 SF 511

Subsection 3 is retroactive to January 1, 1987, and applies to tax years beginning on or after that date; 87 Acts, ch 233, §498 SF 511

NEW subsection 3 and former subsection 3 renumbered as 4

422.13 Return by individual.

1. Every resident and nonresident of this state shall make and sign a return if any of the following are applicable:

a. The individual is required to file a federal income tax return under the Internal Revenue Code of 1954.

b. The individual has net income of five thousand dollars or more for the tax year from sources taxable under this division.

c. The individual is claimed as a dependent on another person's return and has net income of three thousand dollars or more for the tax year from sources taxable under this division.

d. However, if that part of the net income of a nonresident which is allocated to Iowa pursuant to section 422.8, subsection 2 is less than five hundred dollars the nonresident is not required to make and sign a return.

2. For purposes of determining the requirement for filing a return under subsection 1, the combined net income of a husband and wife from sources taxable under this division shall be considered.

3. If the taxpayer is unable to make the return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. A nonresident taxpayer shall file a copy of the taxpayer's federal income tax return for the current tax year with the return required by this section.

5. Notwithstanding subsections 1 through 4 and sections 422.15 and 422.36, a partnership, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code is entitled to request permission from the director to file a composite return for the nonresident partners, beneficiaries, or shareholders. The director may grant permission to file or require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, trust, or corporation filing a composite return is liable for tax required to be shown due on the return. All powers of the director and requirements of the director apply to returns filed under this subsection including, but not limited to, the provisions of this division and division VI of this chapter.

87 Acts, ch 214, §3 HF 675; 87 Acts, ch 1Ex, §4 SF 523; 87 Acts, ch 196, §1 HF 682

1987 amendment to subsection 1, paragraph b, is retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §31 SF 523

Subsection 5 effective for tax years beginning on or after January 1, 1987; 87 Acts, ch 214, §12 HF 675

See Code editor's note

Subsection 1, paragraph b amended

NEW subsection 5

422.16 Withholding of income tax at source—penalties—interest—deduction of estimated tax—bond.

1. Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code of 1954, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an

amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal exemptions and dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or credits may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under section 3402(m)(1) of the Internal Revenue Code of 1954. The claiming of exemptions or credits in excess of entitlement is a serious misdemeanor.

Nonresidents engaged in any facet of feature film, television, or educational production using the film or video tape disciplines in the state are not subject to Iowa withholding if the employer has applied to the department for exemption from the withholding requirement and the department has determined that any nonresident receiving wages would be entitled to a credit against Iowa income taxes paid.

2. A withholding agent required to deduct and withhold tax under subsections 1 and 12, except those required to deposit on a semimonthly basis, shall deposit for each calendar quarterly period, on or before the last day of the month following the close of the quarterly period, on a quarterly deposit form as prescribed by the director and shall pay to the department, in the form of remittances made payable to "Treasurer, State of Iowa", the tax required to be withheld, or the tax actually withheld, whichever is greater, under subsections 1 and 12. However, a withholding agent who withholds more than fifty dollars in any one month, except those required to deposit on a semimonthly basis, shall deposit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the amount withheld in the third month of the quarter but the total amount of withholding for the quarter shall be computed and the amount by which the deposits for that quarter fail to equal the total quarterly liability is due with the filing of the quarterly deposit form. The quarterly deposit form is due within the month following the end of the quarter. A withholding agent who withholds more than eight thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs.

Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax statements with the return.

If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12 hereof, shall be deemed to be held in trust for the state of Iowa.

5. In the event a withholding agent fails to withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

- a. The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.
- b. The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.
- c. The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.
- d. The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.
- e. The total amount of federal income tax withheld.

The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever

is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of revenue and finance, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. a. An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

b. If any person or withholding agent fails to remit at least ninety percent of the tax due with the filing of the semimonthly, monthly, or quarterly deposit form on or before the due date, or pays less than ninety percent of any tax required to be shown on the semimonthly, monthly, or quarterly deposit form, there shall be added to the tax a penalty of fifteen percent of the amount of the tax due, except as provided in section 421.27.

In the case of willful failure to file a semimonthly, monthly, or quarterly deposit form with intent to evade tax or willful filing of a false semimonthly, monthly, or quarterly deposit form with intent to evade tax, in lieu of the penalty otherwise provided in this paragraph, there is added to the amount required to be shown as tax on the semimonthly, monthly, or quarterly deposit form, seventy-five percent of the amount of the tax. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent. The penalty imposed under this subsection is not subject to waiver.

c. If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of

the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

d. The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* Every person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to fifty dollars or more for the taxable year, except that, in the cases of farmers and fishers, the exceptions provided in the Internal Revenue Code of 1954 with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before June 30, September 30, and January 31. However, at the election of the person or married couple, any installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

b. In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

c. If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

**d.* Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code of 1954 for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code of 1954. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code of 1954 and the exceptions in the Internal Revenue Code of 1954 also apply.

e. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of subsection 12 hereof unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Public Law 94-455, amending title 5, section 5517 of the United States Code.

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

87 Acts, ch 115, §55 SF 374; 87 Acts, ch 214, §4 HF 675; 87 Acts, ch 1Ex, §26 SF 523

*Restriction on additions under subsection 11, paragraph d, relating to the underpayment of estimated tax; see 87 Acts, ch 1, 2nd Ex, §15 HF 689

See Code editor's note

Subsection 11, paragraph a amended

422.20 Information confidential—penalty.

1. It shall be unlawful for any present or former officer or employee of the state to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States or tax officials of other states state information and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

2. It shall be unlawful for any officer, employee, or agent, or former officer, employee, or agent of the state to disclose to any person, except as authorized in subsection 1 of this section, any federal tax return or return information as defined in section 6103(b) of the Internal Revenue Code of 1954. It shall further be unlawful for any person to whom any federal tax return or return information, as defined in section 6103(b) of the Internal Revenue Code of 1954, is disclosed in a manner unauthorized by subsection 1 of this section to thereafter print or publish in any manner not provided by law any such return or return information. Any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor.

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63, 421.19, 421.28, and 422.72, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

87 Acts, ch 199, §6 HF 334

Subsections 3 and 4 apply to requests and subpoenas for returns, schedules, and attachments to returns made on or after July 1, 1987; 87 Acts, ch 199, §12

NEW subsections 3 and 4

422.21 Form and time of return.

Returns shall be in the form the director prescribes, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year except that co-operative associations as defined in section 6072(d) of the Internal Revenue Code shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year. If, under the Internal Revenue Code, a corporation is required to file a return covering a tax period of less than twelve months, the state return shall be for the same period and is due forty-five days after the due date of the federal tax return, excluding any extension of time to file. In case of sickness, absence, or other disability, or if good cause exists, the director may allow further time for filing returns. The director shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form does not relieve the taxpayer from the obligation of making a return that is required. The department may as far as consistent with the Code draft income tax forms to conform to the income tax forms of the internal revenue department of the United States government. Each return by a taxpayer upon whom a tax is imposed by section 422.5 shall show the county of the residence of the taxpayer.

The department shall make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the department shall as nearly as possible base such schedules upon a total of deductions and

credits which will result in substantially the same payment as would have been made by such taxpayer were the taxpayer to specifically list his allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school district of the taxpayer's residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the tax return it shall be deemed an incompleated return.

*The director shall determine for the 1979 and subsequent calendar years the annual and cumulative inflation factors for those calendar years to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts as specified therein to be adjusted in section 422.5 by the latest cumulative inflation factor and round off the result to the nearest one dollar. The annual and cumulative inflation factors determined by the director are not rules as defined in section 17A.2, subsection 7.

The department shall provide on **income forms or in the instruction booklets in a manner that will be noticeable to the taxpayers a statement to the extent that even though the taxpayer may not have any federal or state income tax liability, the taxpayer may be eligible for the federal earned income tax credit. The statement shall also contain notice of where the taxpayer may check on the taxpayer's eligibility for this credit.

The department shall prepare and make available a special return for filing a tax refund claim resulting from the net capital gain deduction authorized in section 422.9, subsection 6. The special returns shall be designed so that the department will be able to compile data that identifies the source and type of the capital gains and losses and the geographical location of the transactions involving the capital gains and losses. By January 15, 1989, the department shall make available to the general assembly the data compiled from the special returns filed during the previous calendar year.

87 Acts, ch 115, §56 SF 374; 87 Acts, ch 1, 2nd Ex, §11 HF 689

*Unnumbered paragraph 4 does not apply, effective October 28, 1987, retroactive to January 1, 1987, for tax years beginning in the 1987 calendar year only; 87 Acts, ch 1, 2nd Ex, §13, 16, 17 HF 689

Unnumbered paragraphs 5 and 6 effective October 28, 1987

***"Income tax forms" probably intended

Unnumbered paragraph 1 amended

NEW unnumbered paragraphs 5 and 6 (last two paragraphs)

See Code editor's note to §422.4

422.32 Definitions.

For the purpose of this division and unless otherwise required by the context:

1. The word "*corporation*" includes joint stock companies, and associations organized for pecuniary profit, except limited partnerships organized under chapter 545.

2. The words "*domestic corporation*" mean any corporation organized under the laws of this state.

3. The words "*foreign corporation*" mean any corporation other than a domestic corporation.

4. The term "*affiliated group*" means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

5. The term "*unitary business*" means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

6. "*Business income*" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

7. "*Nonbusiness income*" means all income other than business income.

8. "*Commercial domicile*" means the principal place from which the trade of business of the taxpayer is directed or managed.

9. "*Taxable in another state*". For purposes of allocation and apportionment of income under this division, a taxpayer is taxable in another state if:

a. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

10. "*State*" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

11. "*Internal Revenue Code*" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 1987, whichever is applicable.

The words, terms, and phrases defined in division II, section 422.4, subsections 1, and 3 to 10, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning.

87 Acts, ch 1Ex, §5 SF 523

1987 amendments to subsections 4 and 11 are retroactive to January 1, 1986, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §30

Subsections 4 and 11 amended

422.33 Corporate tax imposed—credit.

1. A tax is hereby imposed upon each corporation organized under the laws of this state, and upon every foreign corporation doing business in this state, annually in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

2. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business within the state, with the net income attributable to the state to be determined as follows:

a. Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale or disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

b. Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph "a", subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural re-

sources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs "a" through "d" or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities net of amortization of any discount or premium shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

5. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures

for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures. For purposes of this subsection, "qualifying expenditures for increasing research activities" means the qualifying expenditures as defined for the federal credit for increasing research activities which would be allowable under section 41 of the Internal Revenue Code.

Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

6. The taxes imposed under this division shall be reduced by a state tax credit equal to five percent of the taxpayer's investment in the initial offering of securities by the Iowa venture capital fund established by the Iowa development commission and governed by a chapter 496A corporation and the Iowa venture capital fund Act. Any credit in excess of the tax liability for the taxable year may be credited to the tax liability for the following three taxable years or until depleted in less than three years.

7. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 280B and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 20, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted in less than the ten years. For purposes of this section, "agreement", "industry", "new job" and "project" mean the same as defined in section 280B.2 and "base employment level" means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 280B on the date of that agreement.

8. For the purpose of this section, a corporation whose sole activity in Iowa is placing liquor in bailment pursuant to section 603 of chapter 1246, 1986 Iowa Acts, is not doing business in this state.

87 Acts, ch 1Ex, §6, 7 SF 523; 87 Acts, ch 22, §11 SF 298

1987 amendment rewriting subsection 4 is retroactive to January 1, 1987, for tax years beginning on or after that date; 1987 amendment to subsection 5 is retroactive to January 1, 1986, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §30, 31 SF 523

Subsection 8 retroactive to July 1, 1986, and is repealed January 1, 1989; 87 Acts, ch 22, §11

Subsection 4 stricken and rewritten

Subsection 5 amended

NEW subsection 8

422.35 Net income of corporation—how computed.

The term "net income" means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.
3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.
4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.
5. Subtract the amount of the jobs tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.
6. If the taxpayer is a small business corporation, subtract an amount equal to fifty percent of the wages paid to individuals named in paragraphs "a", "b", and "c" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. A handicapped individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 246, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1 applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a", "b", and "c" during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

For purposes of this subsection, "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, "small business" means small business as defined in section 220.1, subsection 28, except that it shall also include the operation of a farm.

7. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986 to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986 shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Add the amount of windfall profits tax deducted under section 164(a) of the Internal Revenue Code.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" of this subsection or if not required to be carried back shall be carried forward fifteen taxable years.

c. If the election under section 172(b)(3)(C) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward fifteen taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

87 Acts, ch 1Ex, §8-11 SF 523

1987 amendments under 87 Acts, ch 1Ex, §8 are retroactive to January 1, 1986, for tax years beginning on or after that date; 1987 amendments amending subsection 2, striking former subsection 11, and adding new subsection 12, under 87 Acts, ch 1Ex, §9-11 are retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §30, 31 SF 523

Section amended, former subsection 5 stricken, and former subsections 6-9 renumbered as 5-8

Subsection 2 amended

Former subsection 11 stricken and former subsections 12 and 13 renumbered as 10 and 11

NEW subsection 12

422.36 Returns.

1. Every corporation shall make a return and the same shall be signed by the president or other duly authorized officer. Before a corporation shall be dissolved and its assets distributed it shall make a return for any settlement of the tax for any income earned in the income year up to its final date of dissolution.

2. When any corporation, liable to taxation under this division, conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its

products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products, goods or commodities of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products, goods, or commodities, of the corporation of which it so owns a substantial portion of the stock, in such a manner as to create a loss or improper net income for either of said corporations, the department may determine the amount of taxable income of either or any of such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained, by the corporation or corporations liable to taxation under this division, from dealing in such products, goods, or commodities.

3. Where the director has reason to believe that any person or corporation so conducts a trade or business as either directly or indirectly to distort the person's or corporation's true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, the director may require such facts as are necessary for the proper computation of the entire net income and the net income properly attributable to the state, and shall determine the same, and in the determination thereof the director shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

4. Foreign corporations shall file a copy of their federal income tax return for the current tax year with the return required by this section.

5. Where a corporation is not subject to income tax and the stockholders of such corporation are taxed on the corporation's income under the provisions of the Internal Revenue Code, the same tax treatment shall apply to such corporation and such stockholders for Iowa income tax purposes.

87 Acts, ch 1Ex, §12 SF 523

1987 amendment to subsection 5 is retroactive to January 1, 1986, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §30 SF 523

Subsection 5 amended

422.37 Consolidated returns.

Any affiliated group of corporations may, not later than the due date for filing its return for the taxable year, including any extensions thereof, under rules to be prescribed by the director, elect, and upon demand of the director shall be required, to make a consolidated return showing the consolidated net income of all such corporations and other information as the director may require, subject to the following:

1. The affiliated group filing under this section shall file a consolidated return for federal income tax purposes for the same taxable year.
2. All members of the affiliated group shall join in the filing of an Iowa consolidated return to the extent they are subject to the tax imposed by section 422.33 or have operations which constitute a part of the unitary business of one or more members which are subject to the Iowa tax.
3. Members of the affiliated group exempt from taxation by section 422.34 of the Code shall not be included in a consolidated return.
4. All members of the affiliated group shall use the statutory method of allocation and apportionment unless the director has granted permission to all members to use an alternative method of allocation and apportionment.
5. Each member of the affiliated group shall consent to the rules governing a consolidated return prescribed by the director at the time the consolidated return

is filed, unless the director requires the filing of a consolidated return. The filing of a consolidated return shall be considered the affiliated group's consent.

6. The filing of a consolidated return for any taxable year shall require the filing of consolidated returns for all subsequent taxable years so long as the filing taxpayers remain members of the affiliated group unless the director determines that the filing of separate returns will more clearly disclose the taxable incomes of each member of the affiliated group. This determination shall be made after specific request by the taxpayer for the filing of separate returns.

7. The computation of consolidated taxable income for the members of an affiliated group of corporations subject to tax shall be made in the same manner and under the same procedures, including all intercompany adjustments and eliminations, as are required for consolidating the incomes of affiliated corporations for the taxable year for federal income tax purposes in accordance with section 1502 of the Internal Revenue Code.

87 Acts, ch 1Ex, §13 SF 523
1987 amendment to subsection 7 is retroactive to January 1, 1986, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §30 SF 523
Subsection 7 amended

422.42 Definitions.

The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "*Person*" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

2. "*Sales*" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "*Retail sale*" or "*sale at retail*" means the sale to a consumer or to any person for any purpose, other than for processing, for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services; and includes the sale of gas, electricity, water, and communication service to retail consumers or users; but does not include agricultural breeding livestock and domesticated fowl; and does not include commercial fertilizer, agricultural limestone, herbicide, pesticide, insecticide, food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market; and does not include electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. When used by a manufacturer of food products, electricity, steam, and other taxable services are sold for processing when used to produce marketable food products for human consumption, including but not limited to, treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail; or will be consumed as fuel in creating heat, power, or steam for processing

including grain drying, or for providing heat or cooling for livestock buildings, or for generating electric current, or in implements of husbandry engaged in agricultural production; or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption.

4. "*Business*" includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

5. "*Retailer*" includes every person engaged in the business of selling tangible goods, wares, merchandise or taxable services at retail, or the furnishing of gas, electricity, water, and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division or operating amusement devices or other forms of commercial amusement from which revenues are derived; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this division to regard any salespersons, representatives, truckers, peddlers, or canvassers, as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this division.

6. "*Gross receipts*" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise; provided, however,

a. That discounts for any purpose allowed and taken on sales shall not be included if excessive sales tax is not collected from the purchaser, nor shall the sale price of property returned by customers when the total sale price thereof is refunded either in cash or by credit.

b. That in transactions in which tangible personal property is traded toward the purchase price of other tangible personal property the gross receipts are only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

7. "*Relief agency*" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

8. The word "*taxpayer*" includes any person within the meaning of subsection 1 hereof, who is subject to a tax imposed by this division, whether acting on the person's own behalf or as a fiduciary.

9. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors or builders, for the erection of buildings or the alteration, repair, or improvement of real property, are retail sales in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when

sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa.

10. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall, for the purpose of this division, be construed as a sale at retail thereof by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production thereof.

11. "*Place of business*" shall mean any warehouse, store, place, office, building or structure where goods, wares or merchandise are offered for sale at retail or where any taxable amusement is conducted or each office where gas, water, heat, communication or electric services are offered for sale at retail.

12. "*Casual sales*" means:

a. Sales or the rendering, furnishing or performing of a nonrecurring nature of tangible personal property or services by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 422.43.

b. The sale of all or substantially all of the tangible personal property or services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit when the retailer sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

13. "*Services*" means all acts or services rendered, furnished, or performed, other than services performed on tangible personal property delivered into interstate commerce, or services used in processing of tangible personal property for use in taxable retail sales or services, for an "employer" as defined in section 422.4, subsection 15, for a valuable consideration by any person engaged in any business or occupation specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user thereof.

"*Services used in the processing of tangible personal property*" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale upon which the gross receipts tax under this division or the use tax under chapter 423 will be paid when the tangible personal property is sold.

14. "*User*" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

15. "*Value of services*" means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

16. "*Gross taxable services*" means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where such service is performed on tangible personal property delivered into interstate commerce or is used in processing of tangible personal property for use in taxable retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in the taxpayer's report of gross taxable services for an amount equal to the value of services rendered, furnished, or performed when the full value of such services thereof is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due hereunder, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

Where a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building or place where the books, papers and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

87 Acts, ch 214, §5-7 HF 675

See Code editor's note to §135.11

Subsection 3 amended

Subsection 6, paragraph b, subparagraph (2) amended

Subsections 9 and 10 amended

422.43 Tax imposed.

1. There is imposed a tax of four percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of gas, electricity, water, heat, and communication service, including the gross receipts from such sales by any municipal corporation furnishing gas, electricity, water, heat, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions; and a like rate of tax upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

2. There is imposed a tax of four percent upon the gross receipts derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles and bingo games as defined in chapter 99B, operated or conducted within the state of Iowa, the tax to be collected from the operator in the same manner as is provided for the collection of taxes upon the gross receipts of tickets or admission as provided in this section. The tax shall also be imposed upon the gross receipts derived from the sale of lottery tickets or shares pursuant to chapter 99E. The tax on the lottery tickets or shares shall be included in the sales price and distributed to the general fund as provided in section 99E.10.

3. The tax thus imposed covers all receipts from the operation of games of skill, games of chance, raffles and bingo games as defined in chapter 99B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on all receipts from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the gross receipts from any source of amusement operated for profit, not specified in this section, and upon the gross receipts from which no tax is collected for tickets or admission, but no tax shall be imposed upon any activity exempt from sales tax under section 422.45, subsection 3. Every person receiving gross receipts from the sources defined in this section is subject to all provisions of this division relating to retail sales tax and other provisions of this chapter as applicable.

4. There is imposed a like rate of tax upon the gross receipts from the sales of engraving, photography, retouching, printing, and binding services. For the purpose of this division, the sales of engraving, photography, retouching, printing, and binding services are sales of tangible property.

5. There is imposed a like rate of tax upon the gross receipts from the sales of vulcanizing, recapping, and retreading services. For the purpose of this division, the sales of vulcanizing, recapping, and retreading services are sales of tangible property.

6. There is imposed a tax of four percent upon the gross receipts from the sales of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated

under this section. The gross receipts are subject to tax even if some of the services furnished are not enumerated under this section. For the purpose of this division, the sale of an optional service or warranty contract is a sale of tangible personal property. Additional sales, services or use tax shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this section.

7. A like rate of tax is imposed upon the gross receipts from the renting of rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. "Renting" and "rent" include any kind of direct or indirect charge for such rooms, apartments, or sleeping quarters, or their use. For the purposes of this division, such renting is regarded as a sale of tangible personal property at retail. However, this tax does not apply to the gross receipts from the renting of a room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

8. All revenues arising under the operation of the provisions of this section shall become part of the state general fund.

9. Nothing herein shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

10. There is imposed a tax of four percent upon the gross receipts from the rendering, furnishing, or performing of services as defined in section 422.42.

11. The following enumerated services are subject to the tax imposed on gross taxable services: Alteration and garment repair; armored car; automobile repair; battery, tire and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; car wash and wax; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property, except mobile homes which are tangible personal property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving; household appliance, television, and radio repair; jewelry and watch repair; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; licensed executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewing and stitching; shoe repair and shoeshine; storage warehousing of raw agricultural products; telephone answering service; test laboratories, except tests on humans; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl and vegetables; wrecking service; wrecker and towing; cable television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening.

For purposes of this subsection, gross taxable services from rental includes rents, royalties, and copyright and license fees. For purposes of this subsection, "financial institutions" means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit

unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

87 Acts, ch 214, §8 HF 675; 87 Acts, ch 136, §1 HF 605
See Code editor's note to §135.11
Subsections 7 and 11 amended

422.45 Exemptions.

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property services rendered, furnished, or performed which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing, or service of transportation service except the rental of recreational vehicles or recreational boats, and except the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less.

3. The gross receipts from sales of educational, religious, or charitable activities, where the entire proceeds therefrom are expended for educational, religious, or charitable purposes, except the gross receipts from games of skill, games of chance, raffles and bingo games as defined in chapter 99B.

4. The gross receipts from sales of vehicles subject to registration or subject only to the issuance of a certificate of title.

5. The gross receipts or from services rendered, furnished, or performed and of all sales of goods, wares or merchandise used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility and all divisions, boards, commissions, agencies or instrumentalities of state, federal, county or municipal government which have no earnings going to the benefit of an equity investor or stockholder except sales of goods, wares or merchandise or from services rendered, furnished, or performed and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity or heat to the general public.

The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise or from services rendered, furnished, or performed and subject to use tax under the provisions of chapter 423.

6. The gross receipts from "casual sales".

7. A private nonprofit educational institution in this state or a tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies or instrumentalities of state, federal, county or municipal government which do not have earnings going to the benefit of an equity investor or stockholder may make application to the department for the refund of the sales, services, or use tax upon the gross receipts of all sales of goods, wares or merchandise, or from services rendered, furnished, or performed, to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency or instrumentality of the state or a political subdivision, or a private nonprofit educational institution in this state, if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, or is devoted to educational uses; except goods, wares or merchandise or services rendered, furnished, or performed used in the performance of any

contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public; and except goods, wares, and merchandise used in the performance of a contract for a "project" under chapter 419 as defined in that chapter other than goods, wares or merchandise used in the performance of a contract for a "project" under chapter 419 for which a bond issue was or will have been approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit or private nonprofit educational institution which has made any written contract for performance by said contractor. Such forms shall be filed by the contractor with the governmental unit or educational institution before final settlement is made.

b. Such governmental unit or educational institution shall, not more than six months after the final settlement has been made, make application to the department for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, such application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit such claim and, if approved, issue a warrant to such governmental unit or educational institution in the amount of such sales or use tax which has been paid to the state of Iowa under such contract.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax with penalty and interest thereon.

8. The gross receipts of all sales of goods, wares, or merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise, or services, subject to use tax under the provisions of chapter 423.

9. Gross receipts from the sales of newspapers, free newspapers or shoppers guides and the printing and publishing thereof, and envelopes for advertising.

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

11. The gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the gross receipts from the sales of gasohol, as defined in section 324.2.

12. Gross receipts from the sale of all foods for human consumption which are eligible for purchase with food coupons issued by the United States department of agriculture pursuant to regulations in effect on July 1, 1974, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. However, as used in this subsection, "foods" does not include candy, candy-coated items, and other candy products; beverages, excluding tea and coffee, and all mixes and ingredients used to produce such beverages, which do not contain a primary dairy product or dairy ingredient base or which contain less than fifteen percent natural fruit or vegetable juice; foods prepared on or off the premises of the retailer which are consumed on the premises of the retailer; foods sold by caterers and hot or cold foods prepared for immediate consumption off the premises of the retailer. "Foods prepared for immediate consumption"

include any food product upon which an act of preparation, including but not limited to, cooking, mixing, sandwich making, blending, heating or pouring, has been performed by the retailer so the food product may be immediately consumed by the purchaser.

12A. The gross receipts from the sale of foods purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011, et seq.

13. The gross receipts from the sale of prescription drugs, as defined in chapter 155A, if dispensed for human use or consumption by a registered pharmacist licensed under chapter 155A, a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, an osteopathic physician and surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

14. Gross receipts from the sale of insulin, hypodermic syringes, and diabetic testing materials for human use or consumption.

15. Gross receipts from the sale or rental of prosthetic, orthotic or orthopedic devices for human use. For purposes of this subsection, "orthopedic devices" means those devices prescribed to be used for orthopedic purposes by a physician and surgeon licensed under chapter 148, an osteopath licensed under chapter 150, an osteopathic physician and surgeon licensed under chapter 150A, a dentist licensed under chapter 153, or a podiatrist licensed under chapter 149.

16. Gross receipts from the sale of oxygen prescribed by a licensed physician or surgeon, osteopath, or osteopathic physician or surgeon for human use or consumption.

17. The gross receipts from the sale of horses, commonly known as draft horses, when purchased for use and so used as a draft horse.

18. Gross receipts from the sale of tangible personal property, except vehicles subject to registration, to a person regularly engaged in the business of leasing if the period of the lease is for more than one year, such tangible personal property, and the leasing of such property is subject to taxation under this division. Tangible personal property exempt under this subsection if made use of for any purpose other than leasing or renting, the person claiming the exemption under this subsection shall be liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price. The aggregate of the tax paid on the leasing or rental of such tangible personal property, not to exceed the amount of the sales tax owed, shall be credited against such tax. This sales tax shall be in addition to any sales or use tax that may be imposed as a result of the disposal of such tangible personal property.

19. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.

20. The gross receipts from sales or services rendered, furnished or performed by a county or city. This exemption does not apply to the tax specifically imposed under section 422.43 on the gross receipts from the sales, furnishing or service of gas, electricity, water, heat and communication service to the public by a municipal corporation in its proprietary capacity and does not apply to fees paid to cities and counties for the privilege of participating in any athletic sports.

21. The gross receipts from the sales by a trade shop to a printer of lithographic-offset plates, photoengraved plates, engravings, negatives, color separations, typesetting, the end products of image modulation, or any base material used as a carrier for light-sensitive emulsions to be used by the printer to complete a finished product for sale at retail. For purposes of this subsection, "trade shop"

means a business which is not normally engaged in printing and which sells supplies to printers, including but not limited to, those supplies enumerated in this subsection.

22. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations:

a. Residential care facilities and intermediate care facilities for the mentally retarded and residential care facilities for the mentally ill licensed by the department of health under chapter 135C.

b. Residential facilities for mentally retarded children licensed by the department of human services pursuant to chapter 237.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for mentally retarded and other developmentally disabled persons and adult day care services approved for reimbursement by the state department of human services.

d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.

23. The gross receipts from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

24. The gross receipts from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts or other media used for the purpose of transmitting that which can be seen, heard or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing or the rental of such media and the charge for the viewing or the rental is subject to taxation under this division or chapter 423.

b. The lessee broadcasts the contents of such media for public viewing or listening.

The exemption provided for in this subsection applies to all payments on or after July 1, 1984.

25. The gross receipts from services rendered, furnished or performed by specialized flying implements of husbandry used for agricultural aerial spraying and aerial commercial and charter transportation services.

26. The gross receipts from the sale or rental, on or after July 1, 1987, of farm machinery and equipment, including replacement parts which are depreciable for state and federal income tax purposes, if the following conditions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

b. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, shall not be eligible for this exemption.

27. The gross receipts from the sale or rental, on or after July 1, 1987 or on or after July 1, 1985, in the case of an industry which has entered into an agreement under chapter 280B prior to the sale or lease, of industrial machinery, equipment and computers, including replacement parts which are depreciable for state and federal income tax purposes, if the following conditions are met:

a. The industrial machinery, equipment and computers shall be directly and primarily used in the manner described in section 428.20 in processing tangible personal property or in research and development of new products or processes of

manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purpose of adding value to products, or in processing or storage of data or information by an insurance company, financial institution or commercial enterprise. As used in this paragraph:

(1) "Insurance company" means an insurer organized or operating under chapters 508, 514, 515, 518, 519, 520 or authorized to do business in Iowa as an insurer and having fifty or more persons employed in this state excluding licensed insurance agents.

(2) "Financial institutions" means as defined in section 527.2, subsection 5.

(3) "Commercial enterprise" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses and manufacturers but excludes professions and occupations and nonprofit organizations.

b. The industrial machinery, equipment and computers must be real property within the scope of section 427A.1, subsection 1, paragraphs "e" or "j", and must be subject to taxation as real property.

However, the provisions of chapters 404 and 427B which result in the exemption from taxation of property for property tax purposes do not preclude the property from receiving this exemption if the property otherwise qualifies.

The gross receipts from the sale or rental of hand tools are not exempt. The gross receipts from the sale or rental of pollution control equipment qualifying under paragraph "a" shall be exempt.

The gross receipts from the sale or rental of industrial machinery, equipment, and computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs "h" and "i", shall not be exempt.

28. The gross receipts of all sales of goods, wares, or merchandise used, or from services rendered, furnished or performed in the construction and equipping of the Iowa world trade center for that portion of the project funded by the state of Iowa as authorized in chapter 18C. This subsection is repealed November 30, 1989.

29. The gross receipts from the rendering, furnishing or performing of the following service: design and installation of new industrial machinery or equipment, including electrical and electronic installation.

30. The gross receipts from the sale of wood chips or sawdust used in the production of agricultural livestock or fowl.

31. The gross receipts from the rendering, furnishing or performing of additional services taxed by 1985 Iowa Acts, chapter 32 pursuant to a written services contract in effect on April 1, 1985. This exemption is repealed June 30, 1986.

32. Gross receipts from the sale of raffle tickets for a raffle licensed pursuant to section 99B.5.

33. a. The gross receipts from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 422.43, subsection 11, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423.7. For purposes of this subsection, automotive fluids are all those which are refined, manufactured or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze and gasoline additives.

b. Claims for refund of tax, interest, or penalty which arise under this subsection for the sale or use of automotive fluids occurring between January 1, 1979, and June 30, 1986, shall not be allowed unless filed prior to December 31, 1987, notwithstanding any other provision of law.

34. The gross receipts from the sale, furnishing, or service of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

35. The gross receipts from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

87 Acts, ch 18, §3, 4 SF 270; 87 Acts, ch 205, §1 HF 266; 87 Acts, ch 215, §47 HF 594; 87 Acts, ch 214, §9 HF 675; 87 Acts, ch 115, §57 SF 374; 87 Acts, ch 199, §7 HF 334; 87 Acts, ch 169, §8 HF 626; 87 Acts, ch 233, §134 SF 511

Subsection 2 affirmed and reenacted, effective April 17, 1987; legislative findings; 87 Acts, ch 18, §1, 4 SF 270

Subsection 12A takes effect October 1, 1987; 87 Acts, ch 205, §1 HF 266

NEW subsection 12A

Subsection 13 amended

Subsection 19 amended

Subsection 32 amended

Subsection 33, NEW paragraph b and 1st paragraph lettered a

NEW subsection 34

NEW subsection 35

422.47 Refunds—exemption certificates.

1. a. A relief agency may apply to the director for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

b. Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within such time as the director shall provide by regulation, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this division, based upon such computation of gross receipts.

c. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

2. Construction contractors may make application to the department for a refund of the additional one percent tax paid under this division or the additional one percent tax paid under chapter 423 by reason of the increase in the tax from three to four percent for taxes paid on goods, wares, or merchandise under the following conditions:

a. The goods, wares, or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to March 1, 1983. The refund shall not apply to equipment transferred in fulfillment of a mixed construction contract.

b. The contractor has paid to the department or to a retailer the full four percent tax.

c. The claim is filed on forms provided by the department and is filed within one year of the date the tax is paid.

A contractor who makes an erroneous application for refund shall be liable for payment of the excess refund paid plus interest at the rate in effect under section 421.7. In addition, a contractor who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the excess refund claimed. Excess refunds, penalties, and interest due under this subsection may be enforced and collected in the same manner as the tax imposed by this division.

3. a. The department shall issue or the seller may separately provide exemption certificates in the form prescribed by the director to assist retailers in

properly accounting for nontaxable sales of tangible personal property or services to purchasers for purposes of resale or for processing, except fuel consumed in processing.

b. The sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes in good faith from the purchaser a valid exemption certificate stating under penalties for perjury that the purchase is for resale or for processing and is not a retail sale as defined in section 422.42, subsection 3, or unless the seller takes a fuel exemption certificate pursuant to subsection 4. If the tangible personal property or services are purchased tax free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director.

d. A valid exemption certificate is taken in good faith by the seller when the seller has exercised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. In order for a seller to take a valid exemption certificate in good faith, the seller must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

e. If the circumstances change and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is liable solely for the taxes and shall remit the taxes directly to the department in accordance with this subsection.

4. a. The department shall issue or the seller may separately provide fuel exemption certificates in the form prescribed by the director.

b. The seller may accept a completed fuel exemption certificate, as prepared by the purchaser, for five years unless the purchaser files a new completed exemption certificate. If the fuel is purchased tax free pursuant to a fuel exemption certificate which is taken by the seller, and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes, and shall remit the taxes directly to the department and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58, and 422.59 shall apply to the purchaser.

c. The purchaser may apply to the department for its review of the fuel exemption certificate. In this event, the department shall review the fuel exemption certificate within twelve months from the date of application and determine the correct amount of the exemption. If the amount determined by the department is different than the amount that the purchaser claims is exempt, the department shall promptly notify the purchaser of the determination. Failure of the department to make a determination within twelve months from the date of application shall constitute a determination that the fuel exemption certificate is correct as submitted. A determination of exemption by the department is final unless the purchaser appeals to the director for a revision of the determination within thirty days after the postmark date of the notice of determination. The director shall grant a hearing, and upon the hearing the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision of the director is final unless the purchaser seeks judicial review of the director's decision under section 422.55 within thirty days after the postmark date of the notice of the director's decision. Unless there is a substantial change, the

department shall not impose penalties pursuant to section 422.58, both retroactively to purchases made after the date of application and prospectively until the department gives notice to the purchaser that a tax or additional tax is due, for failure to remit any tax due which is in excess of a determination made under this section. A determination made by the department pursuant to this subsection does not constitute an audit for purposes of section 422.54.

d. If the circumstances change and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department in accordance with subsection 3.

e. The purchaser shall attach documentation to the fuel exemption certificate which is reasonably necessary to support the exemption for fuel consumed in processing. If the purchaser files a new exemption certificate with the seller, documentation shall not be required if the purchaser previously furnished the seller with this documentation and substantial change has not occurred since that documentation was furnished or if fuel consumed in processing is separately metered and billed by the seller.

f. In this section, "fuel" includes gas, electricity, water, heat, steam, and any other tangible personal property consumed in creating heat, power, or steam. In this section, "fuel consumed in processing" means fuel used or disposed of for processing including grain drying, for providing heat or cooling for livestock buildings or for generating electric current, or consumed in self-propelled implements of husbandry engaged in agricultural production. In this subsection, "fuel exemption certificate" means an exemption certificate given by the purchaser under penalty of perjury to assist retailers in properly accounting for nontaxable sales of fuel consumed in processing. In this subsection, "substantial change" means a change in the use or disposition of tangible personal property and services by the purchaser such that the purchaser pays less than ninety percent of the purchaser's actual sales tax liability. A change includes a misstatement of facts in an application made pursuant to paragraph "c" or in a fuel exemption certificate.

87 Acts, ch 196, §2, 3 HF 682

Subsection 4 and 1987 amendment to subsection 3 take effect January 1, 1988; validity of exemption certificates given and accepted before January 1, 1988; 87 Acts, ch 196, §5 HF 682

Subsection 3, paragraphs a and b amended

NEW subsection 4

422.47C Refunds—agricultural implements, machinery or equipment—on or after July 1, 1987.

1. Sales, services, and use taxes paid on repairs to implements or on the purchase or rental of farm machinery or equipment, including replacement parts which are depreciable for state and federal income tax purposes, shall be refunded to the owner, purchaser, or renter provided all of the following conditions are met:

- a. The repairs, purchase, or rental was made on or after July 1, 1987.
- b. The tax was paid to the retailer or timely paid to the department by the user if section 423.14 is applicable.
- c. The claim is filed on forms provided by the department and is filed between July 1 and September 1 for the previous calendar year.
- d. The implements, machinery or equipment is directly and primarily used in livestock or dairy production.

e. The implement is not a self-propelled implement or an implement customarily drawn or attached to a self-propelled implement, and the machinery or equipment is not a grain dryer, subject to an exemption under section 422.45.

2. A claim for refund timely filed under subsection 1 shall be paid by the department within ninety days after the last date a claim may be filed under this section. The department of revenue and finance shall not in any calendar year pay more than three million eight hundred thousand dollars in claims for refunds filed pursuant to this section. If the department determines that the amount of claims is greater than the amount of moneys available to fully satisfy all claims, the

refunds shall be paid on a prorated basis. A claimant who makes an erroneous application for refund shall be liable for payment of any refund paid plus interest at the rate in effect under section 421.7. In addition, a claimant who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the refund claimed. Refunds, penalties, and interest due under this section may be enforced and collected in the same manner as the tax imposed by this division.

87 Acts, ch 169, §9 HF 626
NEW section

422.52 Payment of tax—bond.

1. The tax levied under this division is due and payable in quarterly installments on or before the last day of the month following each quarterly period except as otherwise provided in this subsection. Every retailer who collects more than four thousand dollars in retail sales tax in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-sixth of the tax collected and paid to the department during the preceding quarter, with a deposit form for the semimonthly period as prescribed by the director. The first semimonthly deposit form is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth day of the month. The second semimonthly deposit form is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter. The total quarterly amount, less the amount deposited for the five previous semimonthly periods, is due with the quarterly report on the last day of the month following the month of collection. A retailer who collects more than five hundred dollars in retail sales taxes in one month and not more than four thousand dollars in retail sales taxes in a semimonthly period shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or an amount equal to not less than one-third of the tax collected and paid to the department during the preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. Every retailer who collects more than fifty dollars and not more than five hundred dollars in retail sales tax in one month shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected, or an amount equal to not less than one-third of the tax collected and paid to the department during the last preceding quarter, with a deposit form for the month as prescribed by the director. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. The monthly remittance procedure is optional for any sales tax permit holder whose average monthly collection of tax amounts to more than twenty-five dollars and less than fifty dollars. If the exact amounts of the taxes due or an amount equal to not less than one-third or one-sixth, as applicable, of the tax collected and paid to the department during the last preceding quarter on the deposit form are not ascertainable by the retailer, or would work undue hardship in the computation of the taxes due by the retailer, the director may provide by rules alternative procedures for estimating the amounts (but not the dates) due by the retailers. The forms prescribed by the director shall be referred to as "retailers semimonthly tax deposit" or "retailers monthly tax deposit".

Deposit forms shall be signed by the retailer or the retailer's duly authorized agent, and shall be duly certified by the retailer or agent to be correct. The director may authorize incorporated banks and trust companies or other depositories authorized by law which are depositories or financial agents of the United States, or of this state, to receive any tax imposed under this chapter, in the manner, at the times and under the conditions the director prescribes. The director shall prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

2. Every permit holder at the time of making the return required hereunder, shall compute and pay to the department the tax due for the preceding period.

3. The director may, when necessary and advisable in order to secure the collection of the tax levied under this division, require any person subject to such tax to file with the director a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the director may fix, to secure the payment of any tax or penalties due or which may become due from such person. In lieu of such bond, securities approved by the director, in such amount as the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor thereof, if it becomes necessary so to do in order to recover any tax or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this division shall be returned to the person who deposited the securities.

4. The tax by this division imposed upon those sales of motor vehicle fuel which are subject to tax and refund under chapter 324 shall be collected by the state treasurer by way of deduction from refunds otherwise allowable under said chapter. The amount of such deductions the treasurer shall transfer from the motor vehicle fuel fund to the special tax fund.

5. The provisions of subsection 1, according to the context, shall apply to persons having receipts from rendering, furnishing, or performing services enumerated in section 422.43.

6. *a.* If a purchaser fails to pay tax imposed by this division to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58 and 422.59 apply to the purchaser. For failure, the retailer and purchaser are liable, unless the circumstances described in section 422.47, subsection 3, paragraph "b" or "e" or subsection 4, paragraph "b" or "d" are applicable.

b. If any retailer subject to this division sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this paragraph, the immediate successor is personally liable for the payment of the delinquent taxes, interest and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this paragraph. The department may waive the liability of the immediate successor under this paragraph if the immediate successor exercised good faith in establishing the amount of the previous liability.

c. A person sponsoring a flea market, or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property

or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest and penalty due and owing from any retailer selling property or services at the event. Sections 422.50, 422.51, 422.52, 422.54, 422.55, 422.56, 422.57, 422.58 and 422.59 apply to the sponsors. For purposes of this paragraph a person sponsoring a flea market, or a craft, antique, coin or stamp show or similar event does not include an organization which sponsors an event less than three times a year or a state, county or district agricultural fair.

87 Acts, ch 196, §4 HF 682

1987 amendment to subsection 6, paragraph a takes effect January 1, 1988; 87 Acts, ch 196, §5 HF 682

Subsection 6, paragraph a amended

422.54 Failure to file return—incorrect return.

1. As soon as practicable after a return is filed and in any event within five years after the return is filed the department shall examine it, assess and determine the tax due if the return is found to be incorrect and give notice to the taxpayer of such assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax, or additional tax, if any is found due, shall be assessed and determined and the notice to the taxpayer shall be given by the department within one year after the completion of the examination of the books and records.

2. If a return required by this division is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the department, the department shall determine the amount of tax due from such information as the department may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by the person, stock on hand, or other factors. The department shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the director for a hearing or unless the director on the director's motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the director shall give notice of the decision to the person liable for the tax.

87 Acts, ch 199, §8 HF 334

Subsection 1 amended

422.60 Imposition of tax.

1. A franchise tax according to and measured by net income is imposed on financial institutions for the privilege of doing business in this state as financial institutions.

2. In addition to all taxes imposed under this division, there is imposed upon each financial institution doing business within the state the greater of the tax determined in section 422.63 or the state alternative minimum tax equal to sixty percent of the maximum state franchise tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.61, subsection 4, and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the

Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (c)(1), (d), (f), and (g), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code.

b. Make the adjustments provided in section 56(c)(1) of the Internal Revenue Code, except that in making the calculation under sections 56(f)(1) and 56(g)(1) of the Internal Revenue Code the state alternative minimum taxable income, computed without regard to the adjustments made by this paragraph, the exemption provided for in paragraph "d", and the state alternative tax net operating loss described in paragraph "e", shall be substituted for the items described in sections 56(f)(1)(B) and 56(g)(1)(B) of the Internal Revenue Code.

c. Apply the allocation and apportionment provisions of section 422.63.

d. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

e. In the case of a net operating loss beginning after December 31, 1986 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which was taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

87 Acts, ch 1Ex, §14 SF 523

1987 amendments are retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §31 SF 523

Section stricken and rewritten

422.61 Definitions.

In this division, unless the context otherwise requires:

1. "*Financial institution*" means a state bank as defined in section 524.103, subsection 19, a national banking association having its principal office within this state, a trust company, a federally chartered savings and loan association, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under chapter 534, or a production credit association.

2. "*Taxable year*" means the calendar year or the fiscal year ending during a calendar year, for which the tax is payable. "*Fiscal year*" includes a tax period of less than twelve months if, under the Internal Revenue Code, a corporation is required to file a tax return covering a tax period of less than twelve months.

3. "*Taxpayer*" means a financial institution subject to any tax imposed by this division.

4. "*Net income*" means the net income of the financial institution computed in accordance with section 422.35, with the exception that interest and dividends from federal securities shall not be subtracted, federal income taxes paid or accrued shall not be subtracted, and notwithstanding the provisions of sections 262.41 and 262.51 or any other provisions of the law, income from obligations of the state and its political subdivisions and any amount of franchise taxes paid or

accrued under this division during the taxable year shall be added. Any deduction disallowed under section 265(b) or 291(e)(1)(B) of the Internal Revenue Code shall be subtracted.

87 Acts, ch 1Ex, §15, 16 SF 523; 87 Acts, ch 18, §2 SF 270

1987 amendment to subsection 2 is retroactive to January 1, 1986, for tax years beginning on or after that date; 1987 amendment to subsection 4 is retroactive to January 1, 1987, for tax years beginning on or after that date; 87 Acts, ch 1Ex, §30, 31 SF 523

Subsection 4, Code 1987, affirmed and reenacted, effective April 17, 1987; legislative findings; 87 Acts, ch 18, §1, 4 SF 270

Subsections 2 and 4 amended

422.72 Information deemed confidential.

1. It is unlawful for the director, or any person having an administrative duty under this chapter, or any present or former officer or other employee of the state authorized by the director to examine returns, to divulge in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy of a return or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law. However, the director may authorize examination of such state returns and other state information which is confidential under this section, if a reciprocal arrangement exists, by tax officers of another state or the federal government. The director may, by rules adopted pursuant to chapter 17A, authorize examination of state information and returns by other officers or employees of this state to the extent required by their official duties and responsibilities. Disclosure of state information to tax officers of another state is limited to disclosures which have a tax administrative purpose and only to officers of those states which have laws that are as strict as the laws of this state protecting the confidentiality of returns and information. The director shall place upon the state tax form a notice to the taxpayer that state tax information may be disclosed to tax officials of another state or of the United States for tax administrative purposes. The department shall not authorize the examination of tax information by officers and employees of this state, another state, or of the United States if the officers or employees would otherwise be required to obtain a judicial order to examine the information if it were to be obtained from another source, and if the purpose of the examination is other than for tax administration. However, the director may provide sample individual income tax information to be used for statistical purposes to the legislative fiscal bureau. The information shall not include the name or mailing address of the taxpayer or the taxpayer's social security number. Any information contained in an individual income tax return which is provided by the director shall only be used as a part of a data base which contains similar information from a number of returns. The legislative fiscal bureau shall not have access to the income tax returns of individuals. Each request for individual income tax information shall contain a statement by the director of the legislative fiscal bureau that the individual income tax information received by the bureau shall be used solely for statistical purposes. This subsection does not prevent the department from authorizing the examination of state returns and state information under the provisions of section 252B.9. This subsection prevails over any general law of this state relating to public records.

The director shall provide state tax returns and return information to the auditor of state, to the extent that the information is necessary to complete the annual audit of the department required by section 11.2. The state tax returns and return information provided by the director shall remain confidential and shall not be included in any public documents issued by the auditor of state.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code of 1954, which are required to be filed with the department for the enforcement of the income tax laws of this state,

shall be deemed and held as confidential by the department and subject to the disclosure limitations in subsection 1 of this section.

3. Unless otherwise expressly permitted by section 421.17, subsections 21, 22, 23, 25, and 29, sections 252B.9, 324.63, 421.19, 421.28, and 422.20, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, or 3 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

87 Acts, ch 199, §9 HF 334

1987 amendment to subsection 3 and new subsections 4 and 5 apply to requests and subpoenas for returns, schedules, and attachments to returns made on or after July 1, 1987; 87 Acts, ch 199, §12

Subsection 3 stricken and rewritten

NEW subsections 4 and 5

422.73 Correction of errors—refunds, credits and carrybacks.

1. If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of division IV of this chapter or chapter 423, then such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within five years after the tax payment upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

2. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person's approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit, provided the taxpayer has notified the department in writing no later than six months after the expiration of the three-year limitations period of the existence of this income tax matter.

3. A credit, action or claim for refund arising or existing from a carryback of a net operating loss or net capital loss from tax years ending on or before December 31, 1978 is not allowed, unless the action or claim was received by the department prior to July 1, 1984. This subsection prevails over any other statutes authorizing income tax refunds or claims.

4. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1986, if the taxpayer's federal income tax was forgiven under section 692(c) of the Internal Revenue Code of 1954 because the taxpayer died after November 17, 1978 as a result of wounds or injury incurred due to military or terroristic action outside the United States. To the extent the federal income tax was forgiven under section 692(c) of the Internal Revenue Code of 1954 for the tax year, the Iowa income tax is also forgiven.

5. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid for a tax year beginning in the 1983 calendar year is considered timely if the claim is filed with the department on or before April 30, 1988, if the taxpayer's federal income tax was forgiven under section 692 of the Internal Revenue Code of 1986 because the taxpayer died, or was missing in action and determined dead, while serving in a combat zone. To the extent the federal income tax was forgiven under section 692 of the Internal Revenue Code of 1986 for the tax year, the Iowa income tax is also forgiven.

6. Notwithstanding subsection 2, a claim for credit or refund of the state alternative minimum tax paid for any tax year beginning on or after January 1, 1982, and before January 1, 1984, is considered timely if the claim is filed with the department on or before April 30, 1988, if the taxpayer's capital gains preference items for purposes of the federal individual alternative minimum tax were reduced as a result of section 13208 of the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended by section 1896 of the Tax Reform Act of 1986.

87 Acts, ch 1, 2nd Ex, §12 HF 689

Subsections 5 and 6 effective October 28, 1987; 87 Acts, ch 1, 2nd Ex, §17

NEW subsections 5 and 6

422.88 Failure to pay estimated tax.

Restriction on additions under this section relating to the underpayment of estimated tax; see 87 Acts, ch 1, 2nd Ex, §15 HF 689

CHAPTER 422A

HOTEL AND MOTEL TAX

422A.1 Hotel and motel tax.

A city or county may impose by ordinance of the city council or by resolution of the board of supervisors a hotel and motel tax, at a rate not to exceed seven percent, which shall be imposed in increments of one or more full percentage points upon the gross receipts from the renting of sleeping rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals; except the gross receipts from the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state of Iowa. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county. "Renting" and "rent" include any kind of direct or indirect charge for such sleeping rooms, apartments, or sleeping quarters, or their use. However, the tax does not apply to the gross receipts from the renting of a sleeping room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

A local hotel and motel tax shall be imposed on January 1, April 1, July 1, or October 1, following the notification of the director of revenue and finance. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one

year. A local hotel and motel tax shall terminate only on March 31, June 30, September 30, or December 31. At least sixty days prior to the tax being effective or prior to a revision in the tax rate, or prior to the repeal of the tax, a city or county shall provide notice by mail of such action to the director of revenue and finance.

A city or county shall impose a hotel and motel tax or increase the tax rate, only after an election at which a majority of those voting on the question favors imposition or increase. However, a hotel and motel tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422A.2, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose. The election shall be held at the time of that city's or county's general election or at the time of a special election.

The director of revenue and finance shall administer a local hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting local hotel and motel tax liability. All moneys received or refunded one hundred eighty days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund.

The director, in consultation with local officials, shall collect and account for a local hotel and motel tax and shall credit all revenues to a "local transient guest tax fund" established by section 422A.2.

No tax permit other than the state tax permit required under section 422.53 may be required by local authorities.

The tax herein levied shall be in addition to any state sales tax imposed under section 422.43. The provisions of sections 422.25, subsection 4, 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and 422.70 to 422.75, consistent with the provisions of this chapter, shall apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding the provisions of this paragraph, the director shall provide for only quarterly filing of returns as prescribed in section 422.51. Further, the director may require all persons as defined in section 422.42, who are engaged in the business of deriving gross receipts subject to tax under this chapter, to register with the department.

87 Acts, ch 136, §2 HF 605
Unnumbered paragraph 1 amended

CHAPTER 423

USE TAX

423.1 Definitions.

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section:

1. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (a) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, and containers used in the collection, recovery or return of empty beverage containers subject to chapter 455C, or (b) fuel which is consumed in creating power, heat, or steam for

processing or for generating electric current, or (c) chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing personal property, which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption.

2. "*Purchase*" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "*Purchase price*" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided:

a. That cash discounts taken on sales are not included.

b. That in transactions, except those subject to paragraph "c", in which tangible personal property is traded toward the purchase price of other tangible personal property the purchase price is only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

(1) The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

(2) The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

c. That in transactions between persons, neither of which is a retailer of vehicles subject to registration, in which a vehicle subject to registration is traded toward the purchase price of another vehicle subject to registration, the purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

4. "*Tangible personal property*" means tangible goods, wares, merchandise, optional service or warranty contracts, vulcanizing, recapping, or retreading services, engraving, photography, retouching, printing, or binding services, and gas, electricity, and water when furnished or delivered to consumers or users within this state.

5. "*Retailer*" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter; provided, however, that when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this chapter.

6. "*Retailer maintaining a place of business in this state*" or any like term, shall mean and include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to chapter 494.

7. "*Vehicles subject to registration*" means any vehicle subject to registration pursuant to section 321.18.

8. "*Person*" and "*taxpayer*" shall have the same meaning as defined in section 422.42.

9. "*Trailer*" shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered or is subject only to the issuance of a certificate of title under such motor vehicle law.

10. Definitions contained in section 422.42 shall apply to this chapter according to their context. The use in this state of building materials, supplies, or equipment, the sale or use of which is not treated as a retail sale or a sale at retail under section 422.42, subsections 9 and 10, shall not be subject to tax under this chapter.

11. “*Street railways*” shall mean and include urban transportation systems.

12. “*Department*” and “*director*” shall have the same meaning as defined in section 422.3.

13. “*Certificate of title*” means a certificate of title issued for a vehicle under chapter 321.

14. “*Mobile home*” means mobile home as defined in section 321.1, subsection 68, paragraph “a”.

87 Acts, ch 214, §10, 11 HF 675

Subsection 3, paragraph b, subparagraph (2) amended

Subsection 10 amended

423.18 Offenses—penalties—limitations.

1. If a person or permit holder fails to remit at least ninety percent of the tax due with the filing of the monthly deposit form or return on or before the due date, or pays less than ninety percent of any tax required to be shown on the monthly deposit form or return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due, there shall be added to the tax a penalty of seven and one-half percent of the tax due, except as provided in section 421.27. For tax due under section 423.9, the penalty shall be fifteen percent. In case of willful failure to file a monthly deposit form or return, willfully filing a false monthly deposit form or return, or willfully filing a false or fraudulent monthly deposit form or return with intent to evade tax, in lieu of the penalty otherwise provided in this subsection, there shall be added to the amount required to be shown as tax on the monthly deposit form or return seventy-five percent of the amount of the tax. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the monthly deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The penalty imposed under this subsection is not subject to waiver.

2. A person who willfully attempts in any manner to evade a tax imposed by this chapter or the payment of ninety percent of the tax, or a person who makes or causes to be made any false or fraudulent monthly deposit form or return with intent to evade the tax imposed by this chapter or the payment of ninety percent of the tax is guilty of a class “D” felony.

3. A person required to pay tax, or to make, sign or file a monthly deposit form or return, who willfully makes a false or fraudulent monthly deposit form or return, or who willfully fails at the time required by law to pay the tax or fails to make, sign or file the monthly deposit form or return, is guilty of a fraudulent practice.

4. For purposes of determining the place of trial, the situs of an offense specified in this section is in the county of the residence of the person charged with the offense, unless that person is a nonresident of this state or the residence of that person cannot be established, in which event the situs of the offense is in Polk county.

5. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

87 Acts, ch 199, §10 HF 334

1987 amendment to subsection 1 is retroactive to January 1, 1987, for taxes due on or after that date; 87 Acts, ch 199,

§13
Subsection 1 amended

423.24 Deposit of revenue.

The revenue arising from the operation of this chapter shall be credited as follows:

1. *a.* All revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.7 shall be credited to the primary road fund to the extent necessary to reimburse that fund for the expenditures, not otherwise eligible to be made from the primary road fund, made for repairing, improving and maintaining bridges over the rivers bordering the state. Expenditures for those portions of bridges within adjacent states may be included when they are made pursuant to an agreement entered into under sections 313.63, 313A.34 and 314.10.

b. Any remaining revenues derived from the operation of section 423.7 shall be credited to the road use tax fund.

2. All other revenue arising under the operation of this chapter shall be credited to the general fund of the state.

87 Acts, ch 232, §26 SF 518

See also §307.38 and 87 Acts, ch 232, §28

Section stricken and rewritten

CHAPTER 425

HOMESTEAD TAX CREDITS AND REIMBURSEMENT

425.2 Qualifying for credit.

A person who wishes to qualify for the credit allowed under this chapter shall obtain the appropriate forms for filing for the credit from the assessor. The person claiming the credit shall file a verified statement and designation of homestead with the assessor for the year for which the person is first claiming the credit. The claim shall be filed not later than July 1 of the year for which the person is claiming the credit. A claim filed after July 1 of the year for which the person is claiming the credit shall be considered as a claim filed for the following year.

Upon the filing and allowance of the claim, the claim shall be allowed on that homestead for successive years without further filing as long as the property is legally or equitably owned and used as a homestead by that person or that person's spouse on July 1 of each of those successive years. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall refile for the credit. An owner who ceases to use a property for a homestead shall provide written notice to the assessor by July 1 following the date on which the use is changed. A person who sells or transfers a homestead or the personal representative of a deceased person who had a homestead at the time of death, shall provide written notice to the assessor that the property is no longer the homestead of the former claimant.

In case the owner of the homestead is in active service in the armed forces of this state or of the United States, or is sixty-five years of age or older, or is disabled, the statement and designation may be signed and delivered by any member of the owner's family, by the owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. If the owner of the homestead is married, the spouse may sign and deliver the statement and designation. The commissioner of human services or the commissioner's designee

may make application for the benefits of this chapter as the agent for and on behalf of persons receiving assistance under chapter 249.

Any person sixty-five years of age or older or any person who is disabled may request, in writing, from the appropriate assessor forms for filing for homestead tax credit. Any person sixty-five years of age or older or who is disabled may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

Upon adoption of a resolution by the county board of supervisors, any person may request, in writing, from the appropriate assessor forms for the filing for homestead tax credit. The person may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement of homestead shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

The failure of a person to file a claim under this section on or before July 1 of the year for which the person is first claiming the credit or to have the evidence of ownership recorded in the office of the county recorder does not disqualify the claim if the person claiming the credit or through whom the credit is claimed is otherwise qualified. The belated claim shall be filed with the appropriate assessor on or before December 31 of the following calendar year and, if approved by the board of supervisors, the county treasurer shall file an amended certificate of homestead tax credits with the director of revenue and finance pursuant to section 425.4.

87 Acts, ch 198, §2 HF 374
NEW unnumbered paragraph 6

CHAPTER 427

PROPERTY EXEMPT AND TAXABLE

427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F which shall be subject to assessment and taxation under provisions of chapters 428 and 437. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes. Food and beverages may be served at the events or locations without affecting the

exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire equipment and grounds.* Fire engines and all implements for extinguishing fires, and the publicly owned buildings and grounds used exclusively for keeping them and for meetings of fire companies.

5. *Public securities.* Bonds or certificates issued by any municipality, school district, drainage or levee district, river-front improvement commission or county within the state of Iowa. No deduction from the assessment of the shares of stock of any bank or trust company shall be permitted because such bank or trust company holds such bonds as are exempted above.

6. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit.

7. *Property of cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

8. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

9. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

10. *Personal property of institutions and students.* Moneys and credits belonging exclusively to the institutions named in subsections 7, 8, and 9 and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; and the books, papers, pictures, works of art, apparatus, and other personal property belonging to such institutions and used solely for the purposes contemplated in said subsections and the like property of students in such institutions used for their education.

11. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies

applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue and finance, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 9 or this subsection.

12. *Homes for soldiers.* The buildings, grounds, furniture, and household equipment of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. *Agricultural produce.* Growing agricultural and horticultural crops and products, except commercial orchards and vineyards, and all horticultural and agricultural produce harvested by or for the person assessed within one year previous to the listing, all wool shorn from the person's sheep within such time, all poultry, ten stands of bees, honey and beeswax produced during that time and remaining in the possession of the producer, and all livestock.

14. *Rent.* Obligations for rent not yet due and owned by the original payee.

15. *Family equipment.* All tangible personal property customarily located and used in or about the residence or residences of the owner of said property; all wearing apparel and food used or to be used by the owner or the owner's family; and all personal effects.

16. *Farm equipment—drays—tools.* The farming utensils of any person who makes a livelihood by farming, the team, wagon, and harness of the teamster or dray hauler who makes a living by their use in hauling for others, and the tools of any mechanic, not in any case to exceed one thousand one hundred eleven dollars in taxable value.

17. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

18. *Fraternal beneficiary funds.* The accumulations and funds held or possessed by fraternal beneficiary associations for the purposes of paying the benefits contemplated by section 512.2, or for the payment of the expenses of such associations.

19. *Capital stock of companies.* The shares of capital stock of telegraph and telephone companies, freight-line and equipment companies, transmission line companies as defined in section 437.1, express companies, corporations engaged in merchandising as defined in section 428.16, domestic corporations engaged in manufacturing as defined in section 428.20, and manufacturing corporations organized under the laws of other states having their main operating offices and principal factories in the state of Iowa, and corporations not organized for pecuniary profit.

20. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

21. *Grain.* Grain handled, as defined under section 428.35.

22. *Pension and welfare plans.* All intangible property held pursuant to any pension, profit sharing, unemployment compensation, stock bonus or other retirement, deferred benefit or employee welfare plan the income from which is exempt from taxation under divisions II and III of chapter 422.

23. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 6 or subsection 9 of this section shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue and finance, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, subsection 1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health-related purposes, upon compliance with the filing requirements of this subsection.

An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

24. *Delayed claims.* In any case where no such claim for exemption has been made to the assessor prior to the time the assessor's books are completed, such claims may be filed with the local board of review or with the county auditor not later than July 1 of the year for which such exemption from taxation is claimed, and a proper assessment shall be made either by the board of review or by the county auditor, if said property is all or in part subject to taxation.

25. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

26. *Revoking exemption.* Any taxpayer or any taxing district may make application to the director of revenue and finance for revocation for any exemption, based upon alleged violations of this chapter. The director of revenue and

finance may also on the director's own motion set aside any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue and finance shall give notice by mail to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue and finance, and any order made by the director of revenue and finance revoking or modifying an exemption is subject to judicial review in accordance with the Iowa administrative procedure Act. Notwithstanding the terms of that Act, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking an exemption is made by the director of revenue and finance.

27. *Tax provisions for armed forces.* If any person enters any branch of the armed service of the United States in time of national emergency, all personal property used in making the livelihood, in excess of three hundred dollars in value, of such person shall be assessed but no tax shall be due if such person upon return from service, or in event of the person's death if the person's executor, administrator or next of kin, executes an affidavit to the county assessor that such property was not used in any manner during the person's absence, the tax as assessed thereon shall be waived and no payment shall be required.

28. *Goods stored by warehouse operator.* All personal property intended for ultimate sale or resale, with or without additional processing, manufacturing, fabricating, compounding or servicing, stored in a warehouse of any person, copartnership or corporation engaged in the business of storing goods for profit as defined in section 554.7201 et seq., provided such personal property is not offered for sale or sold by the owner at retail directly from the public warehouse.

29. *Personal property.* All personal property in transit.

30. *Rural water sales.* The real and personal property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

31. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and finance and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue and finance.

32. *Pollution control.* Pollution-control property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

This exemption shall apply to new installations of pollution-control property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control property. If the pollution-control property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control property, determined as of the assessment date.

Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue and finance. The application shall describe and locate the specific pollution-control property to be exempted.

The application for a specific pollution-control property shall be accompanied by a certificate of the administrator of the environmental protection division of the department of natural resources certifying that the primary use of the pollution-

control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state.

A taxpayer may seek judicial review of a determination of the administrator of the environmental protection division or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

The environmental protection commission of the department of natural resources shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control property for which a certificate is requested. The department of revenue and finance shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control property. All rules adopted shall be subject to the provisions of chapter 17A.

For the purposes of this subsection "pollution-control property" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution or to the enhancement of the quality of the air or water of this state shall be exempt from taxation under this subsection.

For the purposes of this subsection "pollution" means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. "Water of the state" means the water of the state as defined in section 455B.171. "Enhance the quality" means to diminish the level of pollutants below the air or water quality standards established by the environmental protection commission of the department of natural resources.

33. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year before the first of July for the exemption. The application shall be made on forms prescribed by the department of revenue and finance. The first application shall be accompanied by a copy of the water storage permit approved by the administrator of the environmental protection division of the department of natural resources and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption status. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court. As used in this subsection, "*impoundment*" means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; "*storage capacity*" means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and "*impoundment structure*" means a dam, earthfill, or other structure used to create an impoundment.

34. *Low-rent housing.* The property owned and operated by a nonprofit organization providing low-rent housing for the elderly and the physically and mentally handicapped. The exemption granted under the provisions of this

subsection shall apply only until the terms of the original low-rent housing development mortgage is paid in full or expires, subject to the provisions of subsections 23 and 24.

35. *Coal.* Coal which is held in inventory to be used for methane gas production or other purposes by a person, corporation, partnership, or other business entity, except coal held in inventory which is owned by a person, corporation, partnership, or other business entity whose property is assessed by the department of revenue and finance pursuant to sections 428.24 to 428.29 or chapters 433 to 438.

36. *Natural conservation or wildlife areas.* Wetlands, recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983 the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted, except that an exemption granted for wetlands shall be for three fiscal years. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, or if not located in a district, to the board of supervisors, not later than April 15 of the assessment year, on forms provided by the department of revenue and finance. However, in the case of an exemption granted for wetlands an application does not have to be filed for the second and third years of the three-year exemption period. The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners or the board of supervisors, if the property is not located in a soil and water conservation district, shall certify whether the property is eligible to receive the exemption. The commissioners or board shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 23.2 at which the proposed priority list shall be presented. However, no public hearing is required if the

proposed priorities are the same as those for the previous year. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest priority on the list adopted, except where the board of supervisors determines that a structure has historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

After receipt of an application with its accompanying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is wetlands, recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located or the state soil conservation committee if not located in a district. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

a. "*Wetlands*" means land preserved in its natural condition which is mostly under water, which produces little economic gain, which has no practical use except for wildlife or water conservation purposes, and the drainage of which would be lawful, feasible and practical and would provide land suitable for the production of livestock, dairy animals, poultry, fruit, vegetables, forage and grains. "*Wetlands*" includes adjacent land which is not suitable for agricultural purposes due to the presence of the land which is under water.

b. "*Open prairies*" includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the state conservation commission.

c. "*Forest cover*" means land which is predominantly wooded.

d. "*Recreational lake*" means a body of water, which is not a river or stream, owned solely by a nonprofit organization and primarily used for boating, fishing, swimming and other recreational purposes.

e. "*Used for economic gain*" includes, but is not limited to, using property for the storage of equipment, machinery, or crops.

Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application accompanied by an affidavit signed by the applicant that if the exemption is

granted the property will not be used for economic gain during the period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection.

37. *Native prairie.* Land designated as native prairie by a county conservation board or by the department of natural resources in an area not served by a county conservation board. Application for the exemption shall be made on forms provided by the department of revenue and finance. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the county conservation board serving the area in which the property is located or if none exists, the department of natural resources stating that the land is native prairie. The county conservation board or the department of natural resources shall issue the certificate if the board or department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. A taxpayer may seek judicial review of a decision of a board or the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

38. *Land certified as a wildlife habitat.* The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the natural resource commission for a wildlife habitat under section 110.3, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wildlife habitat and the assessor shall be given written notice of the decertification.

39. *Right-of-way.* Railroad right-of-way and improvements on the right-of-way only during that period of time that the Iowa railway finance authority holds an option to purchase the right-of-way under section 307B.24.

40. *Public television station.* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

87 Acts, ch 23, §12-14 SF 382; 87 Acts, ch 233, §495 SF 511
 Subsection 33 amended
 Subsection 36, unnumbered paragraphs 2 and 5 amended
 NEW subsection 40

427.2 Taxable property acquired through eminent domain.

Real estate occupied as a public road, and rights of way for established public levees and rights of way for established, open, public drainage improvements shall not be taxed.

When land or rights in land are acquired in connection with or for public use or public purposes, the acquiring authority shall assist in the collection of property taxes and special assessments. However, assistance in the collection of the property taxes does not require the payment of property taxes on the property acquired which exceed the amount of just compensation offered as required by section 472.45 for the acquisition of the property.

The property owner shall pay all property taxes which are due and payable when the property owner surrenders possession of the property acquired and also those which become due and payable for the fiscal year the property is acquired in an amount equal to one-twelfth of the taxes due and payable on the property acquired for the preceding fiscal year multiplied by the number of months in the fiscal year in which the property was acquired which elapsed prior to the month in which the property owner surrenders possession, and including that month if the surrender of possession occurs after the fifteenth day of a month. For purposes of computing the payments, the property owner has surrendered possession of property acquired by eminent domain proceedings when the acquiring authority has the right to obtain possession of the acquired property as authorized by law. When all of the property is acquired for public use or public purposes, the property owner shall pay all special assessments in full which have been certified to the county treasurer for collection before the possession date of the acquiring authority. When part but not all of the property is acquired for public use or public purposes, taxing authorities may collect property taxes and special assessments which the property owner is obligated to pay, in accordance with chapter 446, from that part of the property which is not acquired. The county treasurer shall collect and accept the payment received on property acquired for public use or public purposes as full and final payment of all property tax on the property.

For that portion of the prorated year for which the acquiring authority has possession of the property or part of the property acquired in connection with or for public use or public purposes, all taxes shall be canceled by the county treasurer.

From the date of possession by the acquiring authority for land or rights in land acquired in connection with or for public use or public purposes, and for as long as ownership is retained by the acquiring authority, a special assessment shall not be certified to the county treasurer for collection while under public ownership. However, the assessment may be certified for collection to the county treasurer upon the sale of the acquired property by the acquiring authority to a new owner on a prorated basis. Special assessments certified to a county treasurer for collection while under public ownership shall be canceled by the county treasurer.

Upon sale of the acquired property by the acquiring authority to a new owner, the new owner shall pay all property taxes which become due and payable or would have become due and payable but for the acquisition by the acquiring authority for the fiscal year the property is acquired by the new owner in an amount equal to one-twelfth of the taxes multiplied by the number of months in the fiscal year in which the new owner acquired the property which occurred after the month in which the new owner acquired the property.

87 Acts, ch 40, §1 SF 198
1987 amendment effective April 24, 1987
Section amended

427.5 Claim for military tax exemption—discharge recorded.

A person named in section 427.3, who is a resident of and domiciled in the state of Iowa, shall receive a reduction equal to the exemption, to be made from any property owned by the person and so designated by proceeding as provided in the section. To be eligible to receive the exemption the person claiming it shall have recorded in the office of the county recorder of the county in which is located the property designated for the exemption, evidence of property ownership and the military certificate of satisfactory service, order transferring to inactive status, reserve, retirement, order of separation from service, honorable discharge or a copy of any of these documents of the person claiming or through whom is claimed the exemption.

The person shall file with the appropriate assessor on forms obtained from the assessor the claim for exemption for the year for which the person is first claiming the exemption. The claim shall be filed not later than July 1 of the year for which

the person is claiming the exemption. The claim shall set out the fact that the person is a resident of and domiciled in the state of Iowa, and a person within the terms of section 427.3, and shall give the volume and page on which the certificate of satisfactory service, order of separation, retirement, furlough to reserve, inactive status, or honorable discharge or certified copy thereof is recorded in the office of the county recorder, and may include the designation of the property from which the exemption is to be made, and shall further state that the claimant is the equitable and legal owner of the property designated.

Upon the filing and allowance of the claim, the claim shall be allowed to that person for successive years without further filing. Provided, that notwithstanding the filing or having on file a claim for exemption, the person or person's spouse is the legal or equitable owner of the property on July 1 of the year for which the claim is allowed. When the property is sold or transferred or the person wishes to designate different property for the exemption, a person who wishes to receive the exemption shall refile for the exemption. A person who sells or transfers property which is designated for the exemption or the personal representative of a deceased person who owned such property shall provide written notice to the assessor that the property is no longer legally or equitably owned by the former claimant.

In case the owner of the property is in active service in any of the armed forces of the United States or of this state, including the nurses corps of the state or of the United States, or is sixty-five years of age or older, or is disabled, the claim may be filed by any member of the owner's family, by the owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. In all cases where the owner of the property is married, the spouse may file the claim for exemption. A person may not claim an exemption in more than one county of the state, and if a designation is not made the exemption shall apply to the homestead, if any.

The failure of a person to file a claim under this section before July 1 of the year for which the person is first claiming the exemption or to have evidence of property ownership and satisfactory service, separation, retirement, furlough to reserve, inactive status, or honorable discharge recorded in the office of the county recorder does not disqualify the claim if the person claiming the exemption or through whom the exemption is claimed is otherwise qualified. The belated claim shall be filed with the appropriate assessor on or before December 31 of the following calendar year and, if approved by the board of supervisors, the county treasurer shall file an amended certificate of military service tax credits with the director of revenue pursuant to section 426A.3.

87 Acts, ch 198, §3 HF 374
Unnumbered paragraphs 1 and 5 amended

427.17 Tax credit for livestock tax.

1. The personal property tax levied on all livestock assessed for taxation as of January 1, 1973, shall not be collected in 1974, or any subsequent year, from the owners of the livestock or from those having liability for the payment of the tax.

2. A tax credit shall be allowed each school district in the state for each head of livestock that was assessed as of January 1, 1973. The tax credit shall be based upon the livestock assessed as of January 1, 1973.

3. On or before January 15, 1974, the county auditor of each county shall prepare a statement listing for each taxing district in the county the assessed or taxable values of all livestock assessed for taxation as of January 1, 1973. The statement shall also show the tax rates of the various taxing districts and the total amount of taxes which in the absence of this section would have been levied upon livestock assessed as of January 1, 1973. The county auditor shall certify and forward copies of the statement to the director of revenue and finance not later than January 15, 1974. For the taxes payable for fiscal year 1987 and for subsequent fiscal years, the director of revenue and finance shall compute the applicable tax credit and the amount due to each school district, which amount

shall be the dollar amount which would be payable if all livestock so assessed were taxed, based upon those assessed as of January 1, 1973.

4. The amounts due each school district shall be paid on warrants payable to the respective county treasurers by the director of revenue and finance on July 15 of each year. The county treasurer shall apportion the proceeds to the various school districts in the county.

5. In the event that the amount appropriated for reimbursement of the school districts is insufficient to pay in full the amounts due to each of the school districts, then the amount of each payment shall be reduced by the director of revenue and finance according to the ratio that the total amount of funds to be paid to each school district bears to the total amount to be paid to all school districts in the state.

There is appropriated from the general fund of the state of Iowa to the department of revenue and finance for the fiscal year beginning July 1, 1973, and ending June 30, 1974, the sum of four million dollars, or so much thereof as necessary, and for each succeeding fiscal year the sum of eight million dollars, or so much thereof as necessary, to carry out this section.

87 Acts, ch 169, §6 HF 626
Subsections 2-5 amended

CHAPTER 427B

INDUSTRIAL PROPERTY AND CATTLE FACILITIES—SPECIAL TAX PROVISIONS

427B.7 Actual value added exemption from tax—cattle facilities.

A city council, or a county board of supervisors as authorized by section 427B.2, may, by ordinance as provided in section 427B.1, establish a partial exemption from property taxation of the actual value added to owner-operated cattle facilities, including small or medium sized feedlots but not including slaughter facilities, either by new construction or by the retrofitting of existing facilities. The application for the exemption shall be filed pursuant to section 427B.4. The actual value added to owner-operated cattle facilities, as specified in section 427B.1, is eligible to receive a partial exemption from taxation for a period of five years. The amount of actual value added which is eligible to be exempt from taxation is the same as provided in the exemption schedule in section 427B.3.

87 Acts, ch 169, §10 HF 626
NEW section

427B.8 and 427B.9 Reserved.

CHAPTER 428A

TAXATION OF REAL ESTATE TRANSFERS

428A.1 Amount of tax on transfers.

There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state shall be granted, assigned, transferred, or otherwise conveyed, a tax determined in the following manner: When there is no consideration or when the deed instrument or writing is executed and tendered for recording as an instrument corrective of title, and so states, there shall be no tax. When there is consideration and the actual market value of the real property transferred is in excess of five hundred dollars, the tax shall be fifty-five cents for each five hundred dollars or fractional part of five hundred dollars in excess of five hundred dollars. The term "consideration" as used in this chapter, means the full

amount of the actual sale price of the real property involved, paid or to be paid, including the amount of an incumbrance or lien on the property, whether assumed or not by the grantee. It shall be presumed that the sale price so stated shall include the value of all personal property transferred as part of the sale unless the dollar value of said personal property is stated on the instrument of conveyance. When the dollar value of the personal property included in the sale is so stated, it shall be deducted from the consideration shown on the instrument for the purpose of determining the tax.

When each deed, instrument, or writing by which any real property in this state is granted, assigned, transferred, or otherwise conveyed is presented for recording to the county recorder, a declaration of value signed by at least one of the sellers or one of the buyers or their agents shall be submitted to the county recorder. A declaration of value is not required for those instruments described in section 428A.2, subsections 2 to 5, 7 to 13, and 16 to 19, or described in section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, or if a transfer is the result of acquisition of lands, whether by contract or condemnation, for public purposes through an exercise of the power of eminent domain. The declaration of value shall state the full consideration paid for the real property transferred. If agricultural land, as defined in section 172C.1, is purchased by a corporation, limited partnership, trust, alien or nonresident alien, the declaration of value shall include the name and address of the buyer, the name and address of the seller, a legal description of the agricultural land, and identify the buyer as a corporation, limited partnership, trust, alien, or nonresident alien. The county recorder shall not record the declaration of value, but shall enter on the declaration of value information the director of revenue and finance requires for the production of the sales/assessment ratio study and transmit all declarations of value to the city or county assessor in whose jurisdiction the property is located. The city or county assessor shall enter on the declaration of value the information the director of revenue and finance requires for the production of the sales/assessment ratio study and transmit one copy of each declaration of value to the director of revenue and finance, at times as directed by the director of revenue and finance. The assessor shall retain one copy of each declaration of value for three years from December 31 of the year in which the transfer of realty for which the declaration was filed took place. The director of revenue and finance shall, upon receipt of the information required to be filed under this chapter by the city or county assessor, send to the office of the secretary of state that part of the declaration of value which identifies a corporation, limited partnership, trust, alien, or nonresident alien as a purchaser of agricultural land as defined in section 172C.1.

87 Acts, ch 133, §1 HF 590; 87 Acts, ch 198, §4 HF 374

See Code editor's note to §135.11

Unnumbered paragraph 2 amended

428A.2 Exceptions.

The tax imposed by this chapter shall not apply to:

1. Any executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, or any assignment or cancellation thereof.
2. Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof.
3. Any will.
4. Any plat.
5. Any lease.
6. Any deed, instrument, or writing in which the United States or any agency or instrumentality thereof or the state of Iowa or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, assignor, transferor, or conveyor; and any deed, instrument or writing in which any of such unit of government is the grantee or assignee where there is no consideration.

7. Deeds for cemetery lots.
8. Deeds which secure a debt or other obligation, except those included in the sale of real property.
9. Deeds for the release of a security interest in property excepting those pertaining to the sale of real estate.
10. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.
11. Deeds between husband and wife, or parent and child, without actual consideration. A cancellation of indebtedness alone which is secured by the property being transferred and which is not greater than the fair market value of the property being transferred is not actual consideration within the meaning of this subsection.
12. Tax deeds.
13. Deeds of partition where the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest a tax is due on the greater values, computed at the rate set out in section 428A.1.
14. The making or delivering of instruments of transfer resulting from a corporate merger, consolidation, or reorganization under the laws of the United States or any state thereof, where such instrument states such fact on the face thereof.
15. Deeds between a family corporation, partnership, or limited partnership and its stockholders or partners for the purpose of transferring real property in an incorporation or corporate dissolution or the organization or dissolution of a partnership or limited partnership under the laws of this state, where the deeds are given for no actual consideration other than for shares or for debt securities of the corporation, partnership, or limited partnership. For purposes of this subsection a family corporation, partnership, or limited partnership is a corporation, partnership, or limited partnership where the majority of the voting stock of the corporation, or of the ownership shares of the partnership or limited partnership is held by and the majority of the stockholders or partners are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related and where all of its stockholders or partners are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons.
16. Deeds for the transfer of property or the transfer of an interest in property when the deed is executed between former spouses pursuant to a decree of dissolution of marriage.
17. Deeds transferring easements.
18. Deeds giving back real property to lienholders in lieu of forfeitures or foreclosures.
19. Deeds executed by public officials in the performance of their official duties.

87 Acts, ch 198, §5 HF 374
NEW subsection 19

428A.4 Recording refused.

The county recorder shall refuse to record any deed, instrument, or writing, taxable under section 428A.1 for which payment of the tax determined on the full amount of the consideration in the transaction has not been paid. However, if the deed, instrument, or writing, is exempt under section 428A.2, the county recorder shall not refuse to record the document if there is filed with or endorsed on it a statement signed by either the grantor or grantee or an authorized agent, that the instrument or writing is excepted from the tax under section 428A.2. The validity of an instrument as between the parties, and as to any person who would otherwise be bound by the instrument, is not affected by the failure to comply with

this section. If an instrument is accepted for recording or filing contrary to this section the failure to comply does not destroy or impair the record as notice.

The county recorder shall refuse to record any deed, instrument, or writing by which any real property in this state shall be granted, assigned, transferred, or otherwise conveyed, except those transfers exempt from tax under section 428A.2, subsections 2 to 5, and 7 to 13, or under section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, until the declaration of value has been submitted to the county recorder. A declaration of value shall not be required with a deed given in fulfillment of a recorded real estate contract provided the deed has a notation that it is given in fulfillment of a contract.

87 Acts, ch 133, §2 HF 590
Unnumbered paragraph 2 amended

CHAPTER 432

INSURANCE COMPANIES TAXATION

432.5 Risk retention groups.

A risk retention group organized and operating pursuant to Pub. L. No. 99-563, also known as the risk retention amendments of 1986, shall pay as taxes to the director of revenue and finance an amount equal to two percent of the gross amount of the premiums received during the previous calendar year for risks placed in this state. A resident or nonresident agent shall report and pay the taxes on the premiums for risks that the agent has placed in this state with or on behalf of a risk retention group. The failure of a risk retention group to pay the tax imposed in this section shall result in the risk retention group being considered an unauthorized insurer under chapter 507A.

87 Acts, ch 138, §1 HF 673
NEW section

CHAPTER 441

ASSESSMENT AND VALUATION OF PROPERTY

441.8 Term—continuing education—filling vacancy.

The term of office of an assessor appointed under this chapter shall be for six years. Appointments for each succeeding term shall be made in the same manner as the original appointment except that not less than ninety days before the expiration of the term of the assessor the conference board shall hold a meeting to determine whether or not it desires to reappoint the incumbent assessor to a new term.

Effective January 1, 1980, the conference board shall have the power to reappoint the incumbent assessor only if the incumbent assessor has satisfactorily completed the continuing education program provided for in this section.

The director of revenue and finance shall develop and administer a program of continuing education which shall emphasize assessment and appraisal procedures, and the assessment laws of this state, and which shall include the subject matter specified in section 441.5.

The director of revenue and finance shall establish, designate, or approve courses, workshops, seminars, or symposiums to be offered as part of the continuing education program, the content of these courses, workshops, seminars, or symposiums and the number of hours of classroom instruction for each. The director of revenue and finance may provide that no more than thirty hours of tested credit may be received for the submission of a narrative appraisal approved by a professional appraisal society designated by the director. At least once each

year the director of revenue and finance shall evaluate the continuing education program and make necessary changes in the program.

Upon the successful completion of courses, workshops, seminars, a narrative appraisal or symposiums contained in the program of continuing education, as demonstrated by attendance at sessions of the courses, workshops, seminars or symposiums and, in the case of a course designated by the director of revenue and finance, attaining a grade of at least seventy percent on an examination administered at the conclusion of the course, or the submission of proof that a narrative appraisal has been approved by a professional appraisal society designated by the director of revenue and finance the assessor or deputy assessor shall receive credit equal to the number of hours of classroom instruction contained in those courses, workshops, seminars, or symposiums or the number of hours of credit specified by the director of revenue and finance for a narrative appraisal. An assessor or deputy assessor shall not be allowed to obtain credit for a course, workshop, seminar, or symposium for which the assessor or deputy assessor has previously received credit during the current term or appointment except for those courses, workshops, seminars, or symposiums designated by the director of revenue and finance. Only one narrative appraisal may be approved for credit during the assessor's or deputy assessor's current term or appointment and credit shall not be allowed for a narrative appraisal approved by a professional appraisal society prior to the beginning of the assessor's or deputy assessor's current term or appointment. The examinations shall be confidential, except that the director of revenue and finance and persons designated by the director may have access to the examinations.

Upon receiving credit equal to one hundred fifty hours of classroom instruction during the assessor's current term of office of which at least ninety of the one hundred fifty hours are from courses requiring an examination upon conclusion of the course, the director of revenue and finance shall certify to the assessor's conference board that the assessor is eligible to be reappointed to the position. For assessors whose present terms of office expire before six years from January 1, 1979, or who are appointed to complete an unexpired term, the number of credits required to be certified as eligible for reappointment shall be prorated according to the amount of time remaining in the present term of the assessor.

Within each six-year period following January 1, 1980 or the appointment of a deputy assessor appointed after January 1, 1979, the deputy assessor shall comply with this section except that upon the successful completion of ninety hours of classroom instruction of which at least sixty of the ninety hours are from courses requiring an examination upon conclusion of the course the deputy assessor shall be certified by the director of revenue and finance as being eligible to remain in the position. If a deputy assessor fails to comply with this section, the deputy assessor shall be removed from the position. If a deputy is appointed to the office of assessor, the hours of credit obtained as deputy pursuant to this section shall be credited to that individual as assessor and for the individual to be reappointed at the expiration of the term as assessor, that individual must obtain the credits which are necessary to total the number of hours for reappointment.

Each conference board shall include in the budget for the operation of the assessor's office funds sufficient to enable the assessor and any deputy assessor to obtain certification as provided in this section. The conference board shall also allow the assessor and any deputy assessor sufficient time off from their regular duties to obtain certification. The director of revenue and finance shall adopt rules pursuant to chapter 17A to implement and administer this section.

If the incumbent assessor is not reappointed as above provided, then not less than sixty days before the expiration of the term of said assessor, a new assessor shall be selected as provided in section 441.6.

In the event of the removal, resignation, death, or removal from the county of the said assessor, the conference board shall proceed to fill the vacancy by

appointing an assessor to serve the unexpired term in the manner provided in section 441.6. Until the vacancy is filled, the chief deputy shall act as assessor, and in the event there be no deputy, in the case of counties the auditor shall act as assessor and in the case of cities having an assessor the city clerk shall act as assessor.

87 Acts, ch 198, §6 HF 374

Unnumbered paragraphs 4 and 5 amended

441.17 Duties of assessor.

The assessor shall:

1. Devote full time to the duties of the assessor's office and shall not engage in any occupation or business interfering or inconsistent with such duties.

2. Cause to be assessed, in accordance with section 441.21, all the property, personal and real, in the assessor's county or city as the case may be, except such as is exempt from taxation, or the assessment of which is otherwise provided for by law.

3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to assessment by the assessor.

4. Co-operate with the director of revenue and finance as may be necessary or required, and obey and execute all orders, directions, and instructions of the director of revenue and finance, insofar as the same may be required by law.

5. Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever the assessor has reason to believe that such person, firm, association or corporation has not listed property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

In all cases where the court finds that the taxpayer has not listed the taxpayer's property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the costs shall be paid by the taxpayer, otherwise they shall be paid out of the assessment expense fund. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and the taxpayer's property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the director of revenue and finance, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor each year when the board of review has concluded its hearings and the county auditor shall proceed with the preparation of the current year tax list and the assessor shall co-operate with the auditor in the preparation of the tax lists.

7. Submit on or before May 1 of each year completed assessment rolls to the board of review.

8. Lay before the board of review such information as the assessor may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the director of revenue and finance any information which the assessor may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by the assessor.

10. Measure the exterior length and exterior width of all mobile homes except those for which measurements are contained in the manufacturer's and importer's certificate of origin, and report the information to the county treasurer. Check all mobile homes and travel trailers for inaccuracy of measurements as necessary or upon written request of the county treasurer and check travel trailers for violations of registration and report the findings immediately to the county treasurer. If a mobile home has been converted to real estate the title shall be collected and returned to the county treasurer for cancellation. If taxes due for prior years have not been paid, the assessor shall collect the unpaid taxes due as a condition of conversion. The assessor shall make frequent inspections and checks within the assessor jurisdiction of all mobile homes and mobile home parks and travel trailers and make all the required and needed reports to carry out the purposes of this section.

11. Cause to be assessed for taxation property which the assessor believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

87 Acts, ch 84, §1 SF 264

Subsection 11 is retroactive to January 1, 1987, for assessments for assessment years commencing on and after that date;

87 Acts, ch 84, §3 SF 264

NEW subsection 11

441.33 Sessions of board of review.

The board of review shall be in session from May 1 through the period of time necessary to act on all protests filed under section 441.37 but not later than May 31 each year and for an additional period as required under section 441.37 and shall hold as many meetings as are necessary to discharge its duties. On or before May 31 in those years in which a session has not been extended as required under section 441.37, the board shall return all books, records and papers to the assessor except undisposed of protests and records pertaining to those protests. If it has not completed its work by May 31, in those years in which the session has not been extended under section 441.37, the director of revenue and finance may authorize the board of review to continue in session for a period necessary to complete its work, but the director of revenue and finance shall not approve a continuance extending beyond July 15. On or before May 31 or on the final day of any extended session required under section 441.37 or authorized by the director of revenue and finance, the board of review shall adjourn until May 1 of the following year. It shall adopt its own rules of procedure, elect its own chairperson from its membership, and keep minutes of its meetings. The board shall appoint a clerk who may be a member of the board or any other qualified person, except the assessor or any member of the assessor's staff. It may be reconvened by the director of revenue and finance. All undisposed protests in its hands on July 15 shall be automatically overruled and returned to the assessor together with its other records.

Within fifteen days following the adjournment of any regular or special session, the board of review shall submit to the director of revenue and finance, on forms prescribed by the director, a report of any actions taken during that session.

87 Acts, ch 198, §7 HF 374

Section amended

441.35 Powers of review board.

The board of review shall have the power:

1. To equalize assessments by raising or lowering the individual assessments of real property, including new buildings, personal property or moneys and credits made by the assessor.

2. To add to the assessment rolls any taxable property which has been omitted by the assessor.

3. To add to the assessment rolls for taxation property which the board believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

In any year after the year in which an assessment has been made of all of the real estate in any taxing district, it shall be the duty of the board of review to meet as provided in section 441.33, and where it finds the same has changed in value, to revalue and reassess any part or all of the real estate contained in such taxing district, and in such case, it shall determine the actual value as of January 1 of the year of the revaluation and reassessment and compute the taxable value thereof, and any aggrieved taxpayer may petition for a revaluation of the taxpayer's property, but no reduction or increase shall be made for prior years. If the assessment of any such property is raised, or any property is added to the tax list by the board, the clerk shall give notice in the manner provided in section 441.36, provided, however, that if the assessment of all property in any taxing district is raised the board may instruct the clerk to give immediate notice by one publication in one of the official newspapers located in the taxing district, and such published notice shall take the place of the mailed notice provided for in section 441.36, but all other provisions of said section shall apply. The decision of the board as to the foregoing matters shall be subject to appeal to the district court within the same time and in the same manner as provided in section 441.38.

87 Acts, ch 84, §2 SF 264
 Subsection 3 is retroactive to January 1, 1987, for assessments for assessment years commencing on and after that date;
 87 Acts, ch 84, §3 SF 264
 NEW subsection 3

441.38 Appeal to district court.

Appeals may be taken from the action of the board of review with reference to protests of assessment, to the district court of the county in which the board holds its sessions within twenty days after its adjournment or May 31, whichever date is later. No new grounds in addition to those set out in the protest to the board of review as provided in section 441.37 can be pleaded, but additional evidence to sustain those grounds may be introduced. The assessor shall have the same right to appeal and in the same manner as an individual taxpayer, public body or other public officer as provided in section 441.42. Appeals shall be taken by a written notice to that effect to the chairperson or presiding officer of the board of review and served as an original notice.

87 Acts, ch 198, §8 HF 374
 Section amended

CHAPTER 442

SCHOOL FOUNDATION PROGRAM

Assessed value of open spaces included in valuation base; payments are property tax, not miscellaneous income; 85 Acts, ch 260, §6

Chapter 442 is repealed effective June 30, 1991;

87 Acts, ch 224, §81 HF 499

Task force to study various aspects of teaching and teacher preparation and report by February 1, 1988; working committee to conduct comprehensive study of school finance and report by January 1, 1989; intent to enact new school aid formula to be implemented for the school year beginning July 1, 1991; 87 Acts, ch 224 §73, 74 HF 499

442.4 Enrollment.

1. Basic enrollment for the budget year beginning July 1, 1987 and each subsequent budget year is determined by adding the resident pupils who were

enrolled on the third Friday of September in the base year in public elementary and secondary schools of the district and in public elementary and secondary schools in another district or state for which tuition is paid by the district. For the school year beginning July 1, 1975, and each succeeding school year, pupils enrolled in prekindergarten programs other than special education programs are not included in basic enrollment.

Resident pupils of high school age for which the district pays tuition to attend an Iowa area school are included in basic enrollment on a full-time equivalent basis as of the third Friday of September in the base year.

Shared-time and part-time pupils of school age, irrespective of the districts in which the pupils reside, are included in basic enrollment as of the third Friday of September in the base year for the budget year beginning July 1, 1987 and each subsequent budget year, in the proportion that the time for which they are enrolled or receive instruction for the school year is to the time that full-time pupils carrying a normal course schedule, at the same grade level, in the same school district, for the same school year, are enrolled and receive instruction. Tuition charges to the parent or guardian of a shared-time or part-time out-of-district pupil shall be reduced by the amount of any increased state aid occasioned by the counting of the pupil.

Pupils attending a university laboratory school are not counted in any district's basic enrollment, but the laboratory school shall report them directly to the department of education.

An eleventh or twelfth grade pupil who is no longer a resident of a school district, but who was a resident of the district during the preceding school year may enroll in the district and shall be included in the basic enrollment of the district until the pupil graduates. Tuition for that pupil shall not be charged by the district in which the pupil is enrolled.

A school district shall certify its basic enrollment to the department of education by October 1 of each year, and the department shall promptly forward the information to the department of management. For purposes of determining whether a district is entitled to an advance for increasing enrollment a determination of actual enrollment shall be made on the third Friday of September in the budget year by counting the pupils in the same manner and to the same extent that they are counted in determining basic enrollment, but substituting the count in the budget year for the count in the base year. In addition, a school district shall determine its additional enrollment because of special education defined in section 442.38, on December 1 of each year and if the district is entitled to an advance for special education, it shall certify its additional enrollment because of special education to the department of education by December 15 of each year, and the department shall promptly forward the information to the department of management.

2. An adjusted enrollment for each district shall be computed as follows:

a. For the school year beginning July 1, 1980, and each subsequent school year, the adjusted enrollment for a school district is equal to the larger of the following:

- (1) The basic enrollment for the base year.
- (2) The basic enrollment for the budget year.

If a school district uses subparagraph (2) of this paragraph for its adjusted enrollment and the district's actual enrollment for the budget year is larger than the adjusted enrollment computed under subparagraph (2) of this paragraph, the district may be eligible to receive an advance for increasing enrollment under section 442.28.

b. For the school year beginning July 1, 1979, if a district has a decrease from the basic enrollment in the base year to the basic enrollment in the budget year the state comptroller shall compute an amount to be added to the basic enrollment for the budget year. The amount to be added is equal to one hundred percent of the basic enrollment decrease to the extent that it does not exceed two and one-half

percent of the base year's basic enrollment, and fifty percent of the remaining basic enrollment decrease. If the school district's basic enrollment in the base year is equal to or less than the basic enrollment for budget year the adjusted enrollment shall equal the basic enrollment for the budget year.

3. For the school year beginning July 1, 1980, and each subsequent school year, budget enrollment means the sum of the following:

a. Twenty-five percent of the basic enrollment for the school year beginning July 1, 1979. However, if the basic enrollment of a school district for a budget year is more than fifteen percent higher than the basic enrollment of the district for the base year, the school district's basic enrollment for the budget year shall be used thereafter for the calculation required under this paragraph in lieu of using the basic enrollment for the school year beginning July 1, 1979. However, for the school year beginning July 1, 1989 and each succeeding school year, the twenty-five percent portion shall be reduced to twenty percent.

b. Seventy-five percent of the adjusted enrollment computed under subsection 2, paragraph "a," of this section. However, for the school year beginning July 1, 1989 and each succeeding school year, the seventy-five percent portion shall be increased to eighty percent.

c. Adjustments made by the department of management under subsection 5 of this section.

4. For the school year beginning July 1, 1984 and each subsequent school year, if a school district's basic enrollment for the budget year is larger than its budget enrollment for the budget year, the district shall use its basic enrollment for the budget year in lieu of its budget enrollment for the budget year for computations required in this chapter.

5. For the school year beginning July 1, 1984 and each succeeding school year, if an amount equal to the district cost per pupil for the budget year minus the amount included in the district cost per pupil for the budget year to compensate for the cost of special education support services for a school district for the budget year times the budget enrollment of the school district for the budget year is less than one hundred two percent times an amount equal to the district cost per pupil for the base year minus the amount included in the district cost per pupil for the base year to compensate for the cost of special education support services for a school district for the base year times the budget enrollment for the school district for the base year, the department of management shall increase the budget enrollment for the school district for the budget year to a number which will provide that one hundred two percent amount. For each of the school years beginning July 1, 1988 and July 1, 1989, the one hundred two percent amount shall be reduced by five-tenths of one percent so that for the school year beginning July 1, 1989 and each succeeding school year, the guarantee amount for the budget year is one hundred one percent times an amount equal to the district cost per pupil for the base year minus the amount included in the district cost per pupil for the base year to compensate for the cost of special education support services for a school district for the base year times the budget enrollment for the school district for the base year.

6. For the school year beginning July 1, 1988, and each subsequent school year, weighted enrollment is the budget enrollment as modified by application of the special education weighting plan in section 281.9, the non-English-speaking weighting plan in section 280.4, and the supplementary weighting plan in this chapter.

Commencing with the school year beginning July 1, 1981 and each school year thereafter, the weighted enrollment shall be determined on the basis of a count of

a district's additional enrollment because of special education, as defined in section 442.38, on December 1 of the base year.

87 Acts, ch 4, §2 SF 39; 87 Acts, ch 224, §65-68 HF 499

See Code editor's note

Subsection 1 amended

NEW unnumbered paragraph in subsection 1

Subsection 3, paragraphs a and b amended

Subsection 5 amended

Subsection 6, unnumbered paragraph 1 amended

442.7 State percent of growth—allowable growth.

1. For school years subsequent to the school year beginning July 1, 1978, a state percent of growth for the budget year shall be computed by the department of management prior to September 15 in the base year and forwarded to the director of the department of education. The state percent of growth shall be an average of the following four percentages of growth except as otherwise provided in paragraph "c" of this subsection:

a. The difference in the receipts of state general fund revenues, adjusted for changes in rates or basis, computed or estimated as follows:

(1) The percentage of change between the revenues received during the second year preceding the base year and the revenues received during the year preceding the base year.

(2) The percentage of change between the revenues received during the year preceding the base year and the revenues received during the base year.

However, for computing the state percent of growth to be used for the school year beginning July 1, 1987, the revenues received as a result of the increase in taxes in 1985 Iowa Acts, chapter 32 or as a result of the inclusion of additional items subject to tax in 1985 Iowa Acts, chapter 32 shall not be considered revenues received for the state general fund for purposes of determining the percentages under subparagraph (1) or (2).

b. The difference in the gross national product implicit price deflator published by the bureau of economic analysis, United States department of commerce, computed or estimated as a percentage of change for the following:

(1) From the value for the quarter ending December 31 eighteen months prior to the beginning of the base year to the value for the quarter ending December 31 six months prior to the beginning of the base year.

(2) From the value for the quarter ending December 31 six months prior to the beginning of the base year to the value for the quarter ending December 31 six months prior to the beginning of the budget year.

The computation of the percentage change in the gross national product implicit price deflator shall be based, to the extent possible, on the latest available values for these deflators published by the bureau of economic analysis.

c. If the average of the percentages computed or estimated under paragraph "b" of this subsection exceeds the average of the percentages computed or estimated under paragraph "a" of this subsection, the state percent of growth shall be the average of the two percentages of growth computed or estimated under paragraph "a" of this subsection.

2. Notwithstanding subsection 1 of this section, for the school year beginning July 1, 1980 only, the state percent of growth is the average of the two percentages of growth computed under subsection 1, paragraph "b," of this section.

3. If the state percent of growth so computed is negative, that percentage shall not be used and the state percent of growth shall be zero.

4. Each year prior to September 15 the department of management shall recompute the state percent of growth for the previous year using adjusted estimates and the actual figures available. The difference between the recomputed state percent of growth for the base year and the original computation shall be added to or subtracted from the state percent of growth for the budget year, as applicable. However, for the budget school year beginning July 1, 1980 only, the

state comptroller shall recompute the state percent of growth for the previous year using adjusted estimates and the actual figures available based only upon the consumer price index.

With regard to values of gross national product implicit price deflators, the recomputation of the state percent of growth for the previous year shall be made only with respect to the value of the deflator for the quarter which occurred subsequent to the calculation of the state percent of growth for the previous year. If subsection 1, paragraph "c," of this section is used in the calculation of the state percent of growth for the previous year, the calculation made in subsection 1, paragraph "b," of this subsection shall not be used in the recomputation of the state percent of growth for the previous year.

For the school year beginning July 1, 1981, the recomputation of the state percent of growth for the year beginning July 1, 1980 computed prior to September 15, 1980 and added to or subtracted from the state percent of growth for the school year beginning July 1, 1981 shall also include a percent equal to the difference between the estimate made of the percentage of growth in the receipts of state general fund revenue by the state comptroller prior to September 15, 1978 in computing the state percent of growth for the school year beginning July 1, 1979 and the actual figures of the percentage of growth in the receipts of state general fund revenue.

5. Notwithstanding subsections 1 through 4, for the school year beginning July 1, 1984, if the estimate of the ending fund balance of the state general fund for the fiscal year beginning July 1, 1984 and ending June 30, 1985, as estimated by the state comptroller in January, 1984, is equal to or greater than thirty million dollars and the state foundation base increases to eighty percent pursuant to section 442.3, the state percent of growth, including the recomputations required under subsection 4, is six and two-tenths percent.

6. The basic allowable growth per pupil for the budget year shall be computed by multiplying the state cost per pupil for the base year times the state percent of growth for the budget year.

7. The allowable growth per pupil for each school district is the basic allowable growth per pupil, for the budget year modified as follows:

a. If the state cost per pupil for the budget year exceeds the district cost per pupil for the budget year, the basic allowable growth per pupil for the budget year is modified to equal one hundred ten percent of the product of the state cost per pupil for the base year times the state percent of growth for the budget year. However, the basic allowable growth per pupil for the budget year under this paragraph shall not exceed the difference between the state cost per pupil for the budget year and the district cost per pupil for the budget year. For purposes of this paragraph the state cost per pupil and the district cost per pupil shall not include special education support service costs, and the district cost per pupil for the budget year shall not include that portion of the district cost per pupil created by additions or subtractions to the allowable growth per pupil for the budget year and for prior school years beginning with the school year commencing July 1, 1977, as provided under paragraph "b" of this subsection.

b. By the school budget review committee under section 442.13.

c. For the school year beginning July 1, 1975 only, by adding to the basic allowable growth per pupil for the budget year an amount to compensate for the costs of special education support services provided through the area education agency. The total amount for each area shall be based upon the program plans submitted by the special education director of the area education agency as required by section 273.5, which shall be modified as necessary and approved by the department of public instruction according to the criteria and limitations of section 273.5 and chapter 281. The amount of additional allowable growth per pupil for the budget year for each district in an area shall be determined by

dividing the total amount for the area so determined by the weighted enrollment of the area for the budget year.

d. For the school year beginning July 1, 1976 and ending with the school year beginning July 1, 1980, by adding to the basic allowable growth an amount to compensate for the additional costs of special education support services provided through the area education agency. For the school years beginning July 1, 1978 and July 1, 1979 only, the total amount for each area shall be equal to the total amount approved for special education support services for the base year times one hundred percent plus the state percent of growth. In addition to the amount provided in this paragraph to each area for the school years beginning July 1, 1978 and July 1, 1979 to compensate for the additional costs of special education support services, each area may be granted by the state board an additional amount to serve children newly identified as requiring the services pursuant to plans submitted by the special education director of the area education agency as required by section 273.5. The total of additional amounts granted throughout the state by the state board for the school year beginning July 1, 1978 shall not exceed the total amount approved for special education support services for the school year beginning July 1, 1977 times four and eighty-seven hundredths percent, and for the school year beginning July 1, 1979 shall not exceed the total amount approved for special education support services for the school year beginning July 1, 1978 times three percent. For the school year beginning July 1, 1980 the total amount for the state for special education support services shall not exceed the total amount approved for special education support services for the base year times one hundred percent plus the state percent of growth, and the total amount for each area shall be determined by the state board of public instruction pursuant to plans submitted by the special education director of the area education agency as required by section 273.5, which shall be modified as necessary and approved by the state board of public instruction according to the criteria and limitations of section 273.5 and chapter 281 and within the total amount for the state provided in this paragraph. The amount of additional allowable growth per pupil for the budget year for each district in an area shall be determined by dividing the total amount for the area so determined by the weighted enrollment of the area for the budget year.

e. For the school years prior to the school year beginning July 1, 1981, for the additional allowable growth computed under paragraphs "c" and "d" of this subsection, the state board of public instruction, in co-operation with the appropriate personnel of the area education agency, shall determine the amounts for each area education agency, as required and the state comptroller shall calculate the amounts of additional allowable growth for each district necessary to fund the total special education support services costs as increased for the budget year under paragraph "d" of this subsection, and shall calculate the amounts due from each district to its area education agency by multiplying the additional allowable growth per pupil necessary to fund the total special education support services costs as increased for the budget year under paragraph "d" of this subsection by the weighted enrollment in the district for the budget year. The state comptroller shall deduct the amounts so calculated for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the area education agencies on a quarterly basis during each school year. The state comptroller shall notify each school district of the amount of state aid deducted for this purpose and the balance of state aid will be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover its amount due to the area education agency as calculated by the state comptroller, the school district shall pay the deficiency to the area education agency from other moneys received by the district, on a quarterly basis during each school year.

f. By the department of management under section 442.35.

g. For the school year beginning July 1, 1981 and succeeding school years, the amount included in the district cost per pupil in weighted enrollment for special education support services costs for each district in an area education agency for a budget year is the amount included in the district cost per pupil in weighted enrollment for special education support services costs in the base year plus the allowable growth added to state cost per pupil for special education support services costs for the budget year, except as provided in paragraph "h". Funds shall be paid to area education agencies as provided in section 442.25.

h. For the school year beginning July 1, 1986 and succeeding school years, the director of the department of education may direct the department of management to increase or reduce the allowable growth added to district cost per pupil in weighted enrollment for a budget year for special education support services costs in an area education agency in the base year based upon special education support services needs in the area. However, an increase in the allowable growth can only be granted by action of the director of the department of education to restore a previous reduction or portion of a reduction in allowable growth for that year or the previous year.

8. For the school year beginning July 1, 1981 and succeeding school years, the allowable growth added to state cost per pupil for special education support services costs is the amount included in state cost per pupil for special education support services costs for the base year times the state percent of growth for the budget year. However, for the school year beginning July 1, 1981, no allowable growth shall be added, except as provided under subsection 9.

9. Allowable growth. For the school year beginning July 1, 1981, the state comptroller shall add to the allowable growth of affected school districts, an amount equal to the difference between the amount per pupil in weighted enrollment for the approved budget for the school year beginning July 1, 1980 for special education support services in that area education agency and the amount per pupil in weighted enrollment for the amount certified to generate funds for the school year beginning July 1, 1980 for special education support services in the area education agency and shall adjust the state cost per pupil accordingly.

87 Acts, ch 188, §1 SF 481

Subsection 1, paragraph a, unnumbered paragraph 1 amended

442.13 Duties of the committee.

1. The school budget review committee may recommend the revision of any rules, regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.

2. The committee shall report to each session of the general assembly, which report shall include any recommended changes in laws relating to school districts, and shall specify the number of hearings held annually, the reasons for the committee's recommendations, information about the amounts of property tax levied by school districts for a cash reserve, and other information the committee deems advisable.

3. The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in this chapter. The costs and computations referred to in this section relate to the budget year unless otherwise expressly stated.

4. Subject to the minimum for the school years beginning July 1, 1974, and July 1, 1975, as provided in section 442.7, the committee may establish a modified allowable growth by reducing the allowable growth:

a. If the district cost per pupil exceeds the state cost per pupil.

b. If in the committee's judgment the district cost is unreasonably high in relation to the comparative cost factors of similar districts, even if the district cost per pupil does not exceed the state cost per pupil.

5. If a district has unusual circumstances, creating an unusual need for additional funds, including but not limited to the following circumstances, the committee may grant supplemental aid to the district from any funds appropriated to the department of education for the use of the school budget review committee for this purpose, and such aid shall be miscellaneous income and shall not be included in district cost; or may establish a modified allowable growth for the district by increasing its allowable growth; or both:

a. Any unusual increase or decrease in enrollment.

b. Unusual natural disasters.

c. Unusual transportation problems and for which the per pupil transportation costs are substantially higher than the state average per pupil transportation costs due to sparsity of the population, topographical factors, and other obstacles which hinder the efficient transportation of pupils.

d. Unusual initial staffing problems.

e. The closing of a nonpublic school, wholly or in part.

f. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.

g. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.

h. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes such need and the amount of necessary increased cost.

i. Unusual need for additional funds for special education or compensatory education programs.

j. Year-round or substantially year-round attendance programs which apply toward graduation requirements, including but not limited to trimester or four-quarter programs. Enrollment in such programs shall be adjusted to reflect equivalency to normal school year attendance.

k. Severe hardship due to the exclusion of miscellaneous income from computations under this chapter. For the school year beginning July 1, 1973, the committee shall increase the district's allowable growth to the extent necessary to prevent such hardship.

l. Transportation equipment needs which become necessary because of the furnishing of transportation to nonpublic school pupils under chapter 285.

m. Enrollment decrease caused by the availability of transportation to nonpublic school pupils in a district.

n. Costs of special education programs and services for children requiring special education who are living in a state-supported institution, charitable institution, or licensed boarding home which does not maintain a school and the child has not been counted in the weighted enrollment under section 281.9.

a. Any unique problems of districts to include minority problems, vandalism, civil disobedience and other costs incurred by school districts.

6. If a nonpublic school closes wholly or in part, the committee may authorize an increase in the district general fund tax levy, but only to the extent necessary to cover the cost of absorbing the former nonpublic school pupils into the public school system. The school board shall establish the amount of necessary increased cost to the satisfaction of the school budget review committee before an increase in tax levy is authorized.

7. The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for the purpose or purposes of furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or a tax as provided in chapter 278 and for major building repairs

as defined in section 297.5. No other expenditure, including but not limited to expenditures for salaries or recurring costs, shall be authorized under this subsection. Expenditures authorized under this subsection shall not be included in allowable growth or district cost, and the portion of the unexpended cash balance which is authorized to be spent shall be regarded as if it were miscellaneous income. Any part of such amount which is not actually spent for the authorized purpose shall revert to its former status as part of the unexpended cash balance.

8. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

9. When the committee makes a decision under subsections 3 to 8, it shall make all necessary changes in the district cost, budget, and tax levy. It shall give written notice of its decision, including all such changes, to the school board through the director of the department of management.

10. All decisions by the committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter. All such policies of general application shall be stated in rules adopted in accordance with chapter 17A. The committee shall take into account the intent of this chapter to equalize educational opportunity, to provide a good education for all the children of Iowa, to provide property tax relief, to decrease the percentage of school costs paid from property taxes, and to provide reasonable control of school costs. The committee shall also take into account the amount of funds available.

11. Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing is justification for the committee to instruct the director of the department of management to withhold any state aid to that district until the committee's inquiries are satisfied completely.

12. The committee shall review the recommendations of the director of the department of education relating to the special education weighting plan, and shall establish a weighting plan for each school year after the school year commencing July 1, 1975, and report the plan to the director of the department of education.

13. The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.15.

14. As soon as possible following June 30 of the base year, the school budget review committee shall determine for each school district the balance of funds, whether positive or negative, raised for special education instruction programs under the special education weighting plan established in section 281.9. The committee shall certify the balance of funds for each school district to the director of the department of management.

In determining the balance of funds of a school district under this subsection, the committee shall subtract the amount of any reduction in state aid that occurred as a result of a reduction in allotments made by the governor with the concurrence of the executive council under section 8.31.*

a. If the amount certified for a school district to the director of the department of management under this subsection for the base year is positive, the director of the department of management shall subtract the amount of the positive balance from the amount of state aid remaining to be paid to the district during the budget year. If the positive amount exceeds the amount of state aid that remains to be paid to the district, the school district shall pay the remainder on a quarterly basis prior to June 30 of the budget year to the director of the department of management from other funds received by the district. The director of the department of management shall determine the amount of the positive balance

that would have been local property tax revenues and shall increase the district's total state school aids available under this chapter for the next following budget year by the amount so determined and shall reduce the district's tax levy computed under section 442.9 for the next following budget year by the amount necessary to compensate for the increased state aid.

b. If the amount certified for a school district to the director of the department of management under this subsection for the base year is negative, the director of the department of management shall determine the amount of the deficit that would have been state aid and the amount that would have been property taxes for each eligible school district.

There is appropriated from the general fund of the state to the school budget review committee an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in each district that has a positive balance determined under paragraph "a" for the base year, or the state aid portion of the positive balance determined under paragraph "a" for the base year, whichever is less, totaled on a statewide basis, to be used for supplemental aid payments to school districts. Except as otherwise provided in this paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's deficit balance. The school budget review committee shall direct the director of the department of management to make the payments to school districts under this paragraph.

A school district is eligible to receive supplemental aid payments during the budget year if the school district certifies to the school budget review committee that for the year following the budget year it will request the school budget review committee to instruct the director of the department of management to increase the district's allowable growth and will fund the allowable growth increase either by using moneys from its unexpended cash balance to reduce the district's property tax levy or by using cash reserve moneys to equal the amount of the deficit that would have been property taxes and any part of the state aid portion of the deficit not received as supplemental aid. The director of the department of management shall make the necessary adjustments to the school district's budget to provide the additional allowable growth and shall make the supplemental aid payments.

If the amount appropriated under this lettered paragraph is insufficient to make the supplemental aid payments, the director of the department of management shall prorate the payments on the basis of the amount appropriated.

15. Annually the school budget review committee shall review the amount of property tax levied by each school district for a cash reserve authorized in section 298.10. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high, the committee shall instruct the director of the department of management to reduce that district's tax levy computed under section 442.9 for the following budget year by the amount the cash reserve levy is deemed excessive. A reduction in a district's property tax levy for a budget year under this subsection does not affect the district's authorized budget.

16. The committee shall perform the duties assigned to it under chapter 286A.

87 Acts, ch 115, §58 SF 374

*See 86 Acts, ch 1245, §1972

Subsection 14, paragraph b, unnumbered paragraph 4 amended

442.14 Additional enrichment amount.

1. For the budget year beginning July 1, 1980, and each succeeding school year, if a school board wishes to spend more than the amount permitted under sections 442.1 to 442.13, and the school board has not attempted by resolution to raise an additional enrichment amount for that budget year, the school board may raise an additional enrichment amount not to exceed ten percent of the state cost per pupil multiplied by the budget enrollment in the district, as provided in this section. For the budget year beginning July 1, 1988 and each succeeding school

year, the additional enrichment amount that may be raised is an amount not to exceed fifteen percent of the state cost per pupil multiplied by the budget enrollment in the district. The additional five percent is to provide additional moneys for districts because of budget reductions incurred beginning July 1, 1988 under sections 442.4, subsections 3 and 5.

2. The board shall determine the additional enrichment amount per pupil needed, within the limits of this section, and shall direct the county commissioner of elections to submit the question of whether to raise that amount under this section and section 442.15, to the qualified electors of the school district at a regular school election held during September of the base year or at a special election held not later than February 15 of the base year. Only one election on the question shall be held during a twelve-month period. If a majority of those voting favors raising the enrichment amount, the board may include the approved amount in its certified budget.

3. The additional enrichment amount needed shall be raised within the limits provided in this section by a combination of an enrichment property tax and a school district income surtax imposed in the proportion of a property tax of twenty-seven cents per thousand dollars of assessed valuation of taxable property in the district for each five percent of income surtax.

4. The additional enrichment amount for a district is limited to the amount which may be raised by a combination tax in the prescribed proportion which does not exceed a property tax of one dollar and sixty-two cents per thousand dollars of assessed valuation and an income surtax of thirty percent.

5. Any additional enrichment amount of a school district, not exceeding five percent of the state cost per pupil, which was approved at a referendum prior to July 1, 1978, shall remain in effect for the period for which it was approved.

87 Acts, ch 224, §69, 70 HF 499

Subsection 1 amended

Subsection 4 amended

442.15 Computation of enrichment amount.

If a majority of those voting in an election approves raising the additional enrichment amount under section 442.14 and this section, the board shall certify to the department of management that the required procedures have been carried out, and the department of management shall establish the amount of additional enrichment property tax to be levied and the amount of school district income surtax to be imposed for each school year for which the additional enrichment amount is authorized. The department of management shall determine these amounts based upon the most recent figures available for the district's valuation of taxable property, individual state income tax paid, and budget enrollment in the district, and shall certify to the district's county auditor the amount of enrichment property tax, and to the director of revenue and finance the amount of school district income surtax to be imposed.

The school district income surtax shall be imposed on the state individual income tax for the calendar year during which the school's budget year begins, or for a taxpayer's fiscal year ending during the second half of that calendar year or the first half of the succeeding calendar year, and shall be imposed on all individuals residing in the school district on the last day of the applicable tax year. As used in this section, "state individual income tax" means the tax computed under section 422.5, less the deductions allowed in sections 422.10, 422.11 and 422.12.

An additional enrichment amount authorized under section 442.14 or a lesser amount than the amount so authorized may be continued as provided in this section for a period of five school years. If the amount authorized is less than the maximum of fifteen percent of the state cost per pupil and the board wishes to increase the amount, it shall re-establish its authority to do so in the manner provided in section 442.14. If the board wishes to continue any additional

enrichment amount beyond the five-year period, it shall re-establish its authority to do so in the manner provided in section 442.14 within the twelve-month period prior to termination of the five-year period.

87 Acts, ch 224, §71 HF 499
Unnumbered paragraph 3 amended

442.27 Funding media and educational services.

Media services and educational services provided through the area education agencies shall be funded, to the extent provided, by an addition to the district cost of each school district, determined as follows:

1. For the budget year beginning July 1, 1975, the total amount funded in each area for media services shall be the greater of an amount equal to the costs for media services in the area in the base year times the sum of one hundred percent plus the state percent of growth, or an amount equal to five dollars times the enrollment served in the area in the budget year. The costs for media services in the area in the base year beginning July 1, 1974, shall be a proportionate part of the budgeted expenditures by county school systems and joint county systems formerly serving pupils in the area based upon the enrollment served in that area in the base year by each county school system and joint county system compared to the total enrollment served by that county system or joint county system.

2. For the school year beginning July 1, 1978 and each succeeding budget year through the budget year beginning July 1, 1981, the total amount funded for each area for media services excluding the cost for media resource material shall be the total amount funded in the area for media service in the base year times the sum of one hundred percent plus the state percent of growth plus the costs for media resource material for the budget year.

For the school year beginning July 1, 1981, the total amount to be funded for media services, including the costs for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1, paragraphs "a", "b" and "c", shall be equal to the budget in the base year in the area times the sum of one hundred percent plus the state percent of growth.

3. a. However, for the budget year beginning July 1, 1978, each area in which the amount funded for media services per pupil without inclusion of the costs for media resource material is less than the maximum media service cost per pupil for the enrollment served during the budget year, that area shall receive additional funding for equalization purposes as provided in this paragraph. Each such area shall be funded, in addition to the amount funded under the provisions of subsection 2, an amount equal to one-third of the difference between the product of the maximum media service cost per pupil times the enrollment served in the budget year in the area and that amount the area is eligible to receive for media services other than for media resource material under subsection 2. For the budget year beginning July 1, 1979, each area in which the amount funded for media services, other than for media resource material, is less than the maximum media service cost per pupil for the enrollment served in the area in the budget year, in addition to the amount funded for media services other than media resource material under the provision of subsection 2, shall be funded at an amount equal to one-half of the difference between the product of the maximum media service cost per pupil times the enrollment served in the budget year in the area and that amount the district is eligible to receive under subsection 2 for media services other than for media resource material. For the budget year beginning July 1, 1980, each area shall be funded at that amount generated by multiplying the maximum media service cost per pupil times the enrollment served in the area for the budget year.

For the purposes of this section "maximum media service cost per pupil" means, for the school year beginning July 1, 1978, one hundred percent plus the state percent of growth times eight dollars without inclusion of the cost for media

resource material. For each succeeding school year prior to the school year beginning July 1, 1981, the "maximum media service cost per pupil" without inclusion of the cost of media resource material shall be equal to the one hundred percent plus the state percent of growth for the budget year times the maximum media service cost per pupil for the base year.

b. In addition to the funding provided for media services under subsections 1 and 2 and paragraph "a" of this subsection, for the school year beginning July 1, 1978, an amount shall be funded to be added to media service funds for each area for purchase and replacement of media resource material required in section 273.6, subsection 1, paragraphs "a," "b" and "c". The amount shall be equal to three dollars times the enrollment served in the area in the budget year. For each succeeding school year subsequent to the school year beginning July 1, 1978, and prior to the school year beginning July 1, 1981, the amount to fund media resource material, which shall only be used for the purchase and replacement of material required in section 273.6, subsection 1, paragraphs "a," "b" and "c," shall be equal to the total amount funded in the area for media resource material in the base year times the sum of one hundred percent plus the state percent of growth.

4. For the school year beginning July 1, 1982 and succeeding school years, the total amount funded in each area for media services in the budget year shall be computed as provided in this subsection. For the school year beginning July 1, 1982, the total amount funded in each area for media services in the base year, including the cost for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1, paragraphs "a," "b" and "c", shall be divided by the enrollment served in the base year to provide an area media services cost per pupil in the base year, and the state comptroller shall compute the state media services cost per pupil in the base year which is equal to the average of the area media services costs per pupil in the base year. For the year beginning July 1, 1982 and succeeding school years, the department of management shall compute the allowable growth for media services in the budget year by multiplying the state media services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for media services cost in the budget year equals the area media services cost per pupil in the base year plus the allowable growth for media services in the budget year times the enrollment served in the budget year. Funds shall be paid to area education agencies as provided in section 442.25.

5. For the school year beginning July 1, 1986, the department of management shall increase the area media services cost per pupil in each area education agency and the state media services cost per pupil determined under subsection 4 by one dollar and one cent for the purchase or replacement of material required in section 273.6, subsection 1, paragraphs "a," "b", and "c".

6. For the budget year beginning July 1, 1975, the total amount funded in each area for educational services shall be an amount equal to ten dollars times the enrollment served in the area in the budget year.

7. For each succeeding budget year through the budget year beginning July 1, 1980, the total amount funded in each area for educational services shall be the total amount funded in the area for educational services in the base year times the sum of one hundred percent plus the state percent of growth. For the school year beginning July 1, 1981, the total amount funded in each area for educational services is the total amount funded in the area for educational services in the base year.

8. For the school year beginning July 1, 1982 and succeeding school years, the total amount funded in each area for educational services in the budget year shall be computed as provided in this subsection. For the school year beginning July 1, 1982, the total amount funded in each area for educational services in the base year shall be divided by the enrollment served in the area in the base year to provide an area educational services cost per pupil in the base year, and the state

comptroller shall compute the state educational services cost per pupil in the base year, which is equal to the average of the area educational services costs per pupil in the base year. For the year beginning July 1, 1982 and succeeding school years, the department of management shall compute the allowable growth for educational services by multiplying the state educational services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for educational services for the budget year equals the area educational services cost per pupil for the base year plus the allowable growth for educational services in the budget year times the enrollment served in the area in the budget year. Funds shall be paid to area education agencies as provided in section 442.25.

9. For school years prior to the school year beginning July 1, 1982, of the total amounts funded in each area each year for media services and educational services, a portion shall be allocated to each district in the area. The portion to be allocated to each district in an area shall be the same percentage of the total amount that the enrollment served in the budget year in the district is of the enrollment served in the budget year in the area.

10. For school years prior to the school year beginning July 1, 1982, the portion allocated to each district in an area each budget year for media services and educational services shall be added to the district cost of that district for the budget year as provided in section 442.9.

11. For school years prior to the school year beginning July 1, 1982, the state board of public instruction and the state comptroller shall determine the total amounts funded in each area for media services and educational services each year, and the amounts to be allocated to each district. The state comptroller shall deduct the amounts so calculated for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the districts' area education agencies on a quarterly basis during each school year. The state comptroller shall notify each school district the amount of state aid deducted for this purpose and the balance which will be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover the amount due to its area education agency as calculated by the state comptroller, the school district shall pay the deficiency to its area education agency from other moneys received by the district, on a quarterly basis during each school year.

12. "*Enrollment served*" means the basic enrollment plus the number of nonpublic school pupils served with media services or educational services, as applicable, except that if a nonpublic school pupil receives services through an area other than the area of the pupil's residence, the pupil shall be deemed to be served by the area of the pupil's residence, which shall by contractual arrangement reimburse the area through which the pupil actually receives services. For school years subsequent to the school year beginning July 1, 1986, each school district shall include in the third Friday in September enrollment report the number of nonpublic school pupils within each school district for media and educational services served by the area.

13. For the school year beginning July 1, 1978, and for each subsequent school year, if an area education agency does not serve nonpublic school pupils in a manner comparable to services provided public school pupils for media and educational services, as determined by the state board of education, the state board shall instruct the department of management to reduce the funds for media services and educational services one time by an amount to compensate for such reduced services. The media services budget shall be reduced by an amount equal to the product of the cost per pupil in basic enrollment for media services in the budget year times the difference between the enrollment served and the basic enrollment recorded for the area for the budget year beginning July 1, 1975. The educational services budget shall be reduced by an amount equal to the product of the cost per pupil in basic enrollment for educational services in the budget

year times the difference between the enrollment served and the basic enrollment recorded for the budget year beginning July 1, 1975.

The provisions of this subsection shall apply only to media and educational services which cannot be diverted for religious purposes.

Notwithstanding this subsection, an area education agency shall distribute to nonpublic schools media materials purchased wholly or partially with federal funds in a manner comparable to the distribution of such media materials to public schools as determined by the director of the department of education.

87 Acts, ch 4, §3 SF 39
Subsection 12 amended

442.39 Supplementary weighting plan.

In order to provide additional funds for school districts which send their resident pupils to another school district or to an area school for classes, which jointly employ and share the services of teachers under section 280.15, or which use the services of a teacher employed by another school district, or which jointly employ and share the services of school administrators under section 280.15, a supplementary weighting plan for determining enrollment is adopted as follows:

1. Pupils in a regular curriculum attending all their classes in the district in which they reside and taught by teachers employed by that district, and having administrators employed by that district, are assigned a weighting of one.

2. Pupils attending classes in another school district or an area school, attending classes taught by a teacher who is employed jointly under section 280.15, or attending classes taught by a teacher who is employed by another school district, are assigned a weighting of one plus five-tenths times the percent of the pupil's school day during which the pupil attends classes in another district or area school, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district if the school budget review committee certifies to the department of management that the shared classes or teachers would otherwise not be implemented without the assignment of additional weighting. However, in lieu of the additional weighting of five-tenths, the school budget review committee shall assign an additional weighting of one-tenth times the percent of the pupil's school day in which a pupil attends classes in another district or an area school, attends classes taught by a teacher who is employed jointly under section 280.15, or attends classes taught by a teacher who is employed by another district, in districts that have a substantial number of students in any of grades seven through twelve sharing more than one class or teacher. Effective July 1, 1986, the additional weighting of one-tenth may be assigned by the school budget review committee for a maximum of five years, and thereafter, the additional weighting shall not be assigned under this section, but may be assigned under section 442.39A.

3. A pupil eligible for the weighting plan provided in section 281.9 is not eligible for the weighting plan provided in this section.

4. Pupils enrolled in a school district in which one or more administrators are employed jointly under section 280.15, or in which one or more administrators are employed under section 273.7A, are assigned a weighting of one plus five-hundredths for each administrator who is jointly employed times the percent of the administrator's time in which the administrator is employed in the school district. However, the total additional weighting assigned under this subsection for a budget year for a school district is fifteen and the total additional weighting that may be added cumulatively to the enrollment of school districts sharing an administrator is twenty-five.

For the purposes of this section, "administrators" includes the following:

a. Executive administrators, which includes the superintendent and such assistants as deputy, associate, and assistant superintendents who perform activities in the general direction and management of the affairs of the local school districts.

b. School administrators, which includes assistant principals, and other assistants in general supervision of the operations of the school. School administrators does not include principals.

c. Business administrators, which includes personnel associated with activities concerned with purchasing, paying for, transporting, exchanging, and maintaining goods and services for the school district.

5. For the school year beginning July 1, 1983 and succeeding school years, a school district receiving additional funds under subsection 2 for its pupils at the ninth grade level and above that are enrolled in sequential mathematics courses at the advanced algebra level and above; chemistry, advanced chemistry, physics or advanced physics courses; or foreign language courses at the second year level and above shall have an additional weighting of one pupil added to its total.

87 Act, ch 224, §72 HF 499

Subsection 4, unnumbered paragraph 1 amended

CHAPTER 445

COLLECTION OF TAXES

445.63 Abatement of taxes.

When delinquent mobile home taxes, regular property taxes, or special assessments are owing against property owned or claimed by the state or a political subdivision of this state and the taxes or special assessments are owing before the property is acquired by the state or a political subdivision of this state, the county treasurer shall give notice to the appropriate governing body which shall pay the amount of the delinquent mobile home taxes, regular property taxes, or special assessments due. If the governing body fails to immediately pay the taxes or special assessments due, the board of supervisors may abate all of the delinquent mobile home taxes, regular property taxes, or special assessments.

87 Acts, ch 126, §1 SF 458

NEW section

CHAPTER 450A

GENERATION SKIPPING TRANSFER TAX

450A.1 Definitions.

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

1. "Department" means the department of revenue and finance.
2. "Director" means the director of the department of revenue and finance.
3. "Direct skip" means the same as the term is defined in section 2612(c) of the Internal Revenue Code.
4. "Generation skipping transfer" means the generation skipping transfer as defined in section 2611 of the Internal Revenue Code.
5. "Internal Revenue Code" means the same as the term is defined in section 422.3.
6. "Taxable distribution" means the same as the term is defined in section 2612(b) of the Internal Revenue Code.
7. "Taxable termination" means the same as the term is defined in section 2612(a) of the Internal Revenue Code.

8. "Transferee" means a person receiving property in a generation skipping transfer.

9. "Transferor", "trust", "trustee" and "interest" mean the same as those respective terms are defined in section 2652 of the Internal Revenue Code.

87 Acts, ch 1Ex, §17 SF 523

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87 Acts, ch 1Ex, §32 SF 523

Section amended

450A.2 Imposition of tax.

A tax is imposed on the transfer of any property, included in a generation skipping transfer, other than a direct skip, occurring at the same time and as a result of the death of an individual, in an amount equal to the maximum federal credit allowable under section 2604 of the Internal Revenue Code, for the generation skipping transfer tax actually paid to the state in respect of any property included in the generation skipping transfer.

Where the transferor is a resident of Iowa and all property included in a generation skipping transfer that is subject to tax under this section has a situs in Iowa, or is subject to the jurisdiction of the courts of Iowa, an amount equal to the total credit as allowed under the Internal Revenue Code shall be paid to the state of Iowa. Where the transferor is a nonresident or where the property included in a generation skipping transfer that is subject to tax under this section has a situs outside the state of Iowa and not subject to the jurisdiction of Iowa courts, the tax shall be prorated on the basis that the value of Iowa property included in the generation skipping transfer bears to the total value of property included in the generation skipping transfer.

87 Acts, ch 1Ex, §18 SF 523

1986 amendments retroactive to January 1, 1986, for tax years beginning on or deemed transferors dying on or after January 1, 1986; 86 Acts, ch 1241, §51

See also Code editor's note at the end of Vol III concerning effective date; 86 Acts, ch 1245, §52

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87 Acts, ch 1Ex, §32 SF 523

Section amended

450A.3 Value of property.

The value of property, included in a generation skipping transfer, shall be the same as determined for federal generation skipping transfer tax purposes under the Internal Revenue Code.

87 Acts, ch 1Ex, §19 SF 523

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87 Acts, ch 1Ex, §32 SF 523

Section amended

450A.4 Payment of the tax.

The tax imposed by this chapter shall be paid on or before the last day of the ninth month after the death of the individual whose death is the event causing the generation skipping transfer which is eligible for the credit for state taxes paid under section 2604 of the Internal Revenue Code.

87 Acts, ch 1Ex, §20 SF 523

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87 Acts, ch 1Ex, §32 SF 523

Section amended

450A.5 Liability for the tax.

The transferee of the property included in the generation skipping transfer shall be personally liable for the tax to the extent of its value, determined under section 2624 of the Internal Revenue Code as of the time of the generation skipping transfer. If the tax is attributable to a taxable termination, as defined in section 2612(a) of the Internal Revenue Code, the trustee and the transferee shall

be personally liable for the tax to the extent of the value of the property subject to tax under the trustee's control.

87 Acts, ch 1Ex, §21 SF 523

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87 Acts, ch 1Ex, §32 SF 523

Section amended

450A.6 Lien of the tax.

The tax imposed by this chapter shall be a lien on the property subject to the tax for a period of ten years from the time the generation skipping transfer occurs. Full payment of the tax, penalty and interest due shall release the lien and discharge the transferee and trustee of personal liability. Unless the lien has been perfected by recording, a transfer by the transferee or the trustee to a bona fide purchaser for value shall divest the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgages, purchases or judgment creditors. The department may release the lien prior to the payment of the tax due if adequate security for payment of the tax is given.

87 Acts, ch 1Ex, §22 SF 523

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87 Acts, ch 1Ex, §32 SF 523

Section amended

450A.10 Director to enforce collection.

It shall be the duty of the director to enforce collection of the tax imposed by this chapter and shall with all the rights of a party in interest, represent the state in any proceedings to collect the tax. The director shall have the power to bring suit against any person liable for the payment of the tax, penalty, interest and costs and may foreclose the lien of the tax in the same manner as is now prescribed for the foreclosure of real estate mortgages and upon judgment may cause execution to be issued to sell so much of the property necessary to satisfy the tax, penalty, interest and costs due.

87 Acts, ch 1Ex, §23 SF 523

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87 Acts, ch 1Ex, §32 SF 523

Section amended

450A.11 Duty to claim maximum credit.

It shall be the duty of any person liable for the payment of the tax to claim the maximum federal credit allowable for that portion of the state generation skipping transfer tax paid in respect of any property included in a taxable generation skipping transfer. Claiming on a federal return a sum less than the maximum federal credit allowable shall not relieve any person liable for the tax of the duty to pay the tax imposed under this chapter.

If an amended or supplemental return is filed with the internal revenue service which results in a change in the amount of tax owing under this chapter, the persons liable for the payment of the tax shall submit an amended return, on forms prescribed by the director, indicating the amount of the tax then owing as a result of such change.

If any federal generation skipping transfer tax has been paid before the enactment of this chapter, the persons liable for the payment of the tax under this chapter shall file an amended federal return claiming the maximum federal credit allowable and file the Iowa returns specified in section 450A.8 within six months

after the enactment of this chapter or within the time limit provided in section 450A.4 whichever is the later.

87 Acts, ch 1Ex, §24 SF 523

1987 amendments are retroactive to October 22, 1986, for certain generation skipping transfers made after that date; 87

Acts, ch 1Ex, §32 SF 523

Section amended

CHAPTER 452

SECURITY OF THE REVENUE

452.10 Custody of public funds—investment or deposit.

The treasurer of state and the treasurer of each political subdivision shall at all times keep all funds coming into their possession as public money, in a vault or safe, to be provided for that purpose, or in one or more depositories. However, the treasurer of state and the treasurer of each political subdivision shall invest, unless otherwise provided, any of the public funds not currently needed for operating expenses in notes, certificates, bonds, prime eligible bankers acceptances, commercial paper rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A, perfected repurchase agreements, or other evidences of indebtedness which are obligations of or guaranteed by the United States of America or any of its agencies; or in time deposits in depositories as provided in chapter 453 and receive time certificates of deposit therefor; or in savings accounts in depositories. The total investment in commercial paper of any one corporation is limited to an amount not more than twenty percent of the total stockholders' equity of that corporation. The treasurer of state may invest any of the funds in the treasurer's custody in any of the investments authorized for the Iowa public employees' retirement system in section 97B.7, subsection 2, paragraph "b" except that investment in common stocks is not permitted. As used in this section, "depository" means a financial institution designated as a legal depository under chapter 453.

Notwithstanding any provision of the Code to the contrary, a treasurer of a city as defined in section 411.1, subsection 18, may invest any public funds of the city not currently needed for operating expenses in investments authorized in section 411.7, subsection 2, and pursuant to section 97B.7, subsection 2, paragraph "b", and section 511.8, except common, preferred, or guaranteed stock and may hold, purchase, sell, assign, transfer or dispose of any of these investments as well as the proceeds of these investments. The city council shall implement appropriate investment policies to be followed by the city treasurer and shall periodically review the performance of the investments made by the city treasurer pursuant to such policies under this paragraph.

87 Acts, ch 105, §3 HF 324

Former unnumbered paragraph 3 stricken

CHAPTER 455

LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT

455.21 Service by publication—copy mailed—proof.

The notice provided in section 455.20 shall be served by publication as provided in section 331.305 before the hearing. Proof of the service shall be made by affidavit of the publisher. Copy of the notice shall also be sent by ordinary mail to each person and to the clerk or recorder of each city named in the notice at that person's last known mailing address unless there is on file an affidavit of the

auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of the service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins.

87 Acts, ch 43, §14 SF 265
Section amended

455.33 Dismissal or establishment—permanent easement.

The board shall at said meeting, or at an adjourned session thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and if, in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their sureties, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement.

Following its establishment, the drainage district is deemed to have acquired by permanent easement all right-of-way for drainage district ditches, tile lines, settling basins and other improvements, unless they are acquired by fee simple, in the dimensions shown on the survey and report made in compliance with sections 455.17 and 455.18 or as shown on the permanent survey, plat and profile, if one is made. The permanent easement includes the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement, and inspection. The owner or lessee shall be reimbursed for any crop damages incurred in the maintenance, repair, improvement, and inspection except within the right-of-way of the drainage district.

87 Acts, ch 42, §1 SF 257
Unnumbered paragraph 2 amended

455.135 Repair.

1. When any levee or drainage district has been established and the improvement constructed, the improvement shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees and the board shall keep the improvement in repair as provided in this section.

a. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity or to prolong its useful life.

b. The board may at any time obtain an engineer's report regarding the most feasible means of repairing a drainage or levee improvement and the probable cost of making the repair. If the engineer advises, or the board otherwise concludes that permanent restoration of a damaged structure is not feasible at the time, the board may order temporary construction it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from an engineer's report it is more economical to construct a new line than to repair the existing line, the new line may be considered to be a repair.

c. If the estimated cost of a repair exceeds ten thousand dollars, or seventy-five percent of the original total cost of the district and subsequent improvements, whichever is the greater amount, the board shall set a date for a hearing on the matter of making the proposed repairs, and shall give notice as provided in

sections 455.20 to 455.24. If a hearing is required and the estimated cost of the repair exceeds twenty-five thousand dollars, an engineer's report or a report from the soil and water conservation district conservationist shall be presented at the hearing. The requirement of a report may be waived by the board if a prior report on the repair exists and that report is less than ten years old. The board shall not divide proposed repairs into separate programs in order to avoid the notice and hearing requirements of this paragraph. At the hearing the board shall hear objections to the feasibility of the proposed repairs, and following the hearing the board shall order that the repairs it deems desirable and feasible be made. Any interested party has the right of appeal from such orders in the manner provided in this chapter.

d. The right of remonstrance does not apply to repairs as defined in this section.

2. In the case of minor repairs, or in the eradication of brush and weeds along the open ditches, not in excess of five thousand dollars where the board finds that a saving to the district will result it may cause the repairs or eradication to be done by secondary road equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any district and assess the costs in each case against the land served by the private tile line.

4. For the purpose of this subsection, an "improvement" in a drainage or levee district in which any ditch, tile drain or other facility has previously been constructed is a project intended to expand, enlarge or otherwise increase the capacity of any existing ditch, drain or other facility above that for which it was designed.

a. When the board determines that improvements are necessary or desirable, it shall appoint an engineer to make surveys as seem appropriate to determine the nature and extent of the needed improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. If the estimated cost of the improvements does not exceed five thousand dollars, or twenty-five percent of the original cost of the district and subsequent improvements, whichever is the greater amount, the board may order the work done without notice. If the estimated cost of the improvements does not exceed ten thousand dollars or twenty-five percent of the original cost of the district and subsequent improvements, whichever is the greater amount, the board may order the work done after holding a hearing and publishing notice of that hearing in a newspaper of general circulation published in the county not less than twenty days before the day set for the hearing. The board shall also mail a copy of the notice to any state agency which is a landowner in the district. The board shall not divide proposed improvements into separate programs in order to avoid the limitation for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds the ten thousand dollar or twenty-five percent limit, it shall set a date for a hearing on the matter of constructing the proposed improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of the proposed improvements, and shall give notice as provided in sections 455.20 to 455.24. At the hearing the board shall hear objections to the feasibility of the proposed improvements and arguments for or against a reclassification presented by or for any taxpayer of the district. Following the hearing the board shall order that the improvements it deems desirable and feasible be made, and shall also determine whether there should be a reclassification of benefits for the cost of improvements. If it is determined that a reclassification of benefits should be made the board shall proceed as provided in section 455.45. In lieu of publishing the notice of a hearing as provided by this subsection the board may mail a copy

of the notice to each address where a landowner in the district resides by first class mail if the cost of mailing is less than publication of the notice. The mailing shall be made during the time the notice would otherwise be required to be published.

b. If the estimated cost of the improvements as defined in this subsection exceeds twenty thousand dollars, or the original cost of the district plus the cost of subsequent improvements in the district, whichever is the greater amount, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in the district, may file a written remonstrance against the proposed improvements, at or before the time fixed for hearing on the proposed improvements, with the county auditor, or auditors in case the district extends into more than one county. If a remonstrance is filed, the board shall discontinue and dismiss all further proceedings on the proposed improvements and charge the costs incurred to date for the proposed improvements to the district. Any interested party may appeal from such orders in the manner provided in this chapter. However, this section does not affect the procedures of section 455.142 covering the common outlet.

5. Where under the laws in force prior to 1904, drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

6. The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter 472. If additional right of way is required for any repair or improvement under this section, the same may be acquired in the same manner as provided for the acquisition of right of way in the original establishment of a district, except that where notice and hearing are not otherwise required under this section notice as provided in this chapter to owners, lienholder of record, and occupants of the land from which right of way is to be acquired shall suffice.

7. In existing districts where the stream has by erosion appropriated lands beyond its original right of way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right of way, the board may, in the discharge of the duties enjoined upon it by this section, effect such acquisition as to the whole or part of the course. Right of way so taken shall be classed an improvement for the purpose of procedure under this section.

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right of way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of the district and to actually define the right of way taken for drainage purposes. After the land surveyor has filed the survey and report with the board, the board shall fix a date for hearing on the report and shall serve notice of the hearing upon all landowners and lienholders of record and occupants of the lands traversed by the right of way in the manner and for the time required for service of original notices in the district court. At the hearing the board shall specifically define the land taken for the right-of-way. Once established, the right-of-way constitutes a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. A

person aggrieved by the action or failure to act of the board under this subsection may appeal only in compliance with sections 455.92 through 455.108.

87 Acts, ch 23, §15 SF 382; 87 Acts, ch 143, §1 HF 345
 Subsection 1, paragraph c amended
 Subsection 4, paragraph a amended

CHAPTER 455A

DEPARTMENT OF NATURAL RESOURCES

Employee retirement benefits; 87 Acts, ch 233, §216
 Plant material prices; woodlands management programs;
 relationship with private nurseries; 87 Acts, ch 233, §217
 Limit on bridge construction; 87 Acts, ch 233, §18

455A.6 Environmental protection commission—appointment and duties.

1. An environmental protection commission is created, which consists of nine members appointed by the governor for staggered terms of four years beginning and ending as provided in section 69.19. Commission appointees are subject to senate confirmation. The members shall be electors of the state and have knowledge of the subjects embraced in chapter 455B. The appointments shall be based upon the training, experience, and capacity of the appointees, and not based upon political considerations, other than as provided in section 69.16. The membership of the commission shall be as follows:

- a. Three members actively engaged in livestock and grain farming.
- b. A member actively engaged in the business of finance or commerce.
- c. A member actively engaged in the management of a manufacturing company.

d. Four members who are electors of the state.

2. A vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment was made.

3. The members of the commission shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

4. The commission shall hold an organizational meeting within thirty days of the beginning of a new regular term for one or more of its members. The commission shall organize by electing a chairperson, vice chairperson, secretary, and any other officers deemed necessary or desirable. The commission shall meet at least quarterly throughout the year.

5. A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission.

6. Except as otherwise provided by law, the commission shall:

a. Establish policy for the department and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 455B, 455C, or 469.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 84, 93, 455B, 455C, or 469.

c. Approve or disapprove the issuance of hazardous waste disposal site licenses under chapter 455B.

87 Acts, ch 115, §59 SF 374
 Subsection 6, paragraph b amended

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

455B.145 Acceptance of local program.

When an air pollution control program conducted by a political subdivision, or a combination of them, is deemed upon review as provided in section 455B.134, to

be consistent with the provisions of this division II or the rules established under this division, the director shall accept such program in lieu of state administration and regulation of air pollution within the political subdivisions involved. This section shall not be construed to limit the power of the director to issue state permits and to take other actions consistent with this division II or the rules established under this division that the director deems necessary for the continued proper administration of the air pollution programs within the jurisdiction of the local air pollution program.

1. In evaluating an air pollution control program, consideration shall be given to whether such program provides for the following:

a. Ordinances, rules and standards establishing requirements consistent with, or more strict than, those imposed by this division II or rules and standards adopted by the department.

b. Enforcement of such requirements by appropriate administrative and judicial process.

c. Administrative organization, staff, financial and other resources necessary to administer an efficient and effective program.

d. Location of emission monitoring devices in areas of the political subdivision in compliance with uniform state standards adopted by the department. The department shall adopt uniform state standards for the location of emission monitoring devices specifying such intervals and such procedures to provide a reasonably consistent measurement of emissions from air contaminant sources regardless of the political subdivision of the state in which the sources may be located.

2. Upon acceptance of a local air pollution control program, the director shall issue a certificate of acceptance to the appropriate local agency.

a. Any political subdivision desiring a certificate of acceptance shall apply to the department on forms prescribed by the director.

b. The director shall promptly investigate the application and approve or disapprove the application. The director may conduct a public hearing before action is taken to approve or disapprove. If the director disapproves issuing a certificate, the political subdivision may appeal the action to the department of inspections and appeals. At the hearing on appeal, the department of inspections and appeals shall decide whether the local program is substantially consistent with the provisions of this division II, or rules adopted thereunder, and whether the local program is being enforced. The burden of proof shall be upon the political subdivision.

c. If the director determines at any time that a local air pollution program is being conducted in a manner inconsistent with the substantive provisions of this division II or the rules adopted thereunder, the director shall notify the political subdivision, citing the deviations from the acceptable standards and the corrective measures to be completed within a reasonable amount of time. If the corrective measures are not implemented as prescribed, the director shall suspend in whole or in part the certificate of acceptance of such political subdivision and shall administer the regulatory provisions of said division in whole or in part within the political subdivision until the appropriate standards are met. Upon receipt of evidence that necessary corrective action has been taken, the director shall reinstate the suspended certificate of acceptance, and the political subdivision shall resume the administration of the local air pollution control program within its jurisdiction. In cases where the certificate of acceptance is suspended, the political subdivision may appeal the suspension to the department of inspections and appeals.

d. Nothing in this division II shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the first of January, 1973, except that any such program shall meet all requirements of said division.

87 Acts, ch 33, §1 HF 134
Unnumbered paragraph 1 amended

455B.172 Jurisdiction of department and local boards.

1. The department is the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.

2. The department shall carry out the responsibilities of the state related to private water supplies and private sewage disposal systems for the protection of the environment and the public health and safety of the citizens of the state.

3. Each county board of health shall adopt standards for private water supplies and private sewage disposal facilities. These standards shall be at least as stringent but consistent with the standards adopted by the commission. If a county board of health has not adopted standards for private water supplies and private sewage disposal facilities, the standards adopted by the commission shall be applied and enforced within the county by the county board of health.

4. Each county board of health shall regulate the private water supply and private sewage disposal facilities located within the county board's jurisdiction, including the enforcement of standards adopted pursuant to this section.

5. The department shall maintain jurisdiction over and regulate the direct discharge to a water of the state. The department shall retain concurrent authority to enforce state standards for private water supply and private sewage disposal facilities within a county, and exercise departmental authority if the county board of health fails to fulfill board responsibilities pursuant to this section.

The commission shall make grants to counties for the purpose of conducting programs for the testing of private, rural water supply wells and for the proper closing of abandoned, rural, private water supply wells within the jurisdiction of the county. Grants shall be funded through allocation of the agriculture management account of the groundwater protection fund. Grants awarded, continued, or renewed shall be subject to the following conditions:

a. An application for a grant shall be in a form and shall contain information as prescribed by rule of the commission.

b. Nothing in this section shall be construed to prohibit the department from making grants to one or more counties to carry out the purpose of the grant on a joint, multicounty basis.

c. A grant shall be awarded on an annual basis to cover a fiscal year from July 1 to June 30 of the following calendar year.

d. The continuation or renewal of a grant shall be contingent upon the county's acceptable performance in carrying out its responsibilities, as determined by the director. The director, subject to approval by the commission, may deny the awarding of a grant or withdraw a grant awarded if, by determination of the director, the county has not carried out the responsibilities for which the grant was awarded, or cannot reasonably be expected to carry out the responsibilities for which the grant would be awarded.

6. a. The department is the state agency to regulate the construction, reconstruction and abandonment of all of the following water wells:

(1) Those used as part of a public water supply system as defined in section 455B.171.

(2) Those used for the withdrawal of water for which a permit is required pursuant to section 455B.268, subsection 1.

(3) Those used for the purpose of monitoring groundwater quantity and quality required or installed pursuant to directions or regulations of the department.

b. A local board of health is the agency to regulate the construction, reconstruction and abandonment of water wells not otherwise regulated by the department. The local board of health shall not adopt standards relative to the construction, reconstruction and abandonment of wells less stringent than those adopted by the department.

7. The department is the state agency to regulate the registration of water well contractors pursuant to section 455B.187.

8. Pursuant to chapter 28E, the department may delegate its authority for regulation of the construction, reconstruction and abandonment of water wells specified in subsection 6 or the registration of water well contractors specified in subsection 7 to boards of health or other agencies which have adequate authority and ability to administer and enforce the requirements established by law or rule.

87 Acts, ch 225, §112, 113 HF 631

Subsection 2 stricken and rewritten

NEW subsections 3, 4, and 5 and former subsections 3-5 renumbered as 6-8

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards. The effluent standards may provide for maintaining the existing quality of the water of the state where the quality thereof exceeds the requirements of the water quality standards.

If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306 or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 and 169 or both sections of the Internal Revenue Code of 1954, whichever period ends first.

3. Establish, modify or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions under which the director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system or public water supply system, or for the discharge of any pollutant or for the disposal of water wastes resulting from poultry and livestock operations. The rules specifying the conditions under which the director shall issue permits for the construction of an electric power generating facility subject to chapter 476A shall provide for issuing a conditional permit upon the submission of engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems that will provide compliance with effluent standards or limitations.

No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Co-operate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. Establish, modify or repeal rules relating to inspection, monitoring, record keeping and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall co-operate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be co-ordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73 and D-3139-73 of the American society of testing and material. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

9. Adopt, modify or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include,

but are not limited to, establishing fees for registration of water well contractors, requiring the submission of well driller's logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration program.

10. Adopt, modify, or repeal rules relating to the awarding of grants to counties for the purpose of carrying out responsibilities pursuant to section 455B.172 relative to private water supplies and private sewage disposal facilities.

87 Acts, ch 225, §114 HF 631
NEW subsection 10

455B.181 Variances and exemptions.

The director may, after public notice and hearing, grant exemptions from a maximum contaminant level or treatment technique, or both. The director may also grant a variance from drinking water standards for public water supply systems when the characteristics of the raw water sources, which are available to a system, cannot meet the requirements with respect to maximum contaminant level of the standards despite application of the best treatment techniques which are generally available and if the director determines that the variance will not result in an unreasonable risk to the public health. A schedule of compliance may be prescribed by the director, at the time the variance or exemption is granted. The director shall also require the interim measures to minimize the contaminant levels of systems subject to the variance or exemption as may reasonably be implemented. The director may also issue variances from other rules of the department if necessary and appropriate. The director shall submit variances granted regarding a wastewater treatment facility to the commission for the commission's review within thirty days of the granting of a variance. The denial of a variance or exemption may be appealed to the commission.

87 Acts, ch 29, §1 HF 641
Section amended

455B.187 Water well construction.

A contractor shall not engage in well construction or reconstruction without first registering as required in department rules. Water wells shall not be constructed, reconstructed, or abandoned by a person except as provided in this part or rules adopted pursuant to this part. Within thirty days after construction or reconstruction of a well, a contractor shall provide well information required by rule to the department and the Iowa geological survey.

A landowner or the landowner's agent shall not drill for or construct a new water well without first obtaining a permit for this activity from the department. The department shall not issue a permit to any person for this activity unless the person first registers with the department all wells, including abandoned wells, on the property. The department may delegate the authority to issue a permit to a county board of supervisors or the board's designee. In the event of such delegation, the department shall retain concurrent authority. The commission shall adopt rules pursuant to chapter 17A to implement this paragraph.

Notwithstanding the provisions of this section, a county board of supervisors or the board's designee may grant an exemption from the permit requirements to a landowner or the landowner's agent if an emergency drilling is necessary to meet an immediate need for water. The exemption shall be effective immediately upon approval of the county board of supervisors or the board's designee. The board of supervisors or the board's designee shall notify the director within thirty days of the granting of an exemption.

In the case of property owned by a state agency, a person shall not drill for or construct a new water well without first registering with the department the existence of any abandoned wells on the property. The department shall develop

a prioritized closure program and time frame for the completion of the program, and shall adopt rules to implement the program.

87 Acts, ch 225, §304 HF 631
NEW unnumbered paragraphs 2-4

455B.189 Reserved.

455B.190 Abandoned wells properly plugged.

All abandoned wells, as defined in section 455B.171, shall be properly plugged in accordance with the schedule established by the department. The department shall develop a prioritized closure program and a time frame for the completion of the program and shall adopt rules to implement the program. A person who fails to properly plug an abandoned well on property the person owns, in accordance with the program established by the department, is subject to a civil penalty of up to one hundred dollars per day that the well remains unplugged or improperly plugged. The moneys collected shall be deposited in the financial incentive portion of the agriculture management account. The department of agriculture and land stewardship may provide by rule for financial incentive moneys, through expenditure of the moneys allocated to the financial-incentive-program portion of the agriculture management account, to reduce a person's cost in properly plugging wells abandoned prior to July 1, 1987.

87 Acts, ch 225, §305 HF 631
NEW section

455B.301 Definitions.

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. "*Actual cost*" means the operational, remedial and emergency action, closure, postclosure, and monitoring costs of a sanitary disposal project for the lifetime of the project.

2. "*Closure*" means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed sanitary landfill, including, but not limited to, application of final cover, grading and seeding of final cover, installation of an adequate monitoring system, and construction of ground and surface water diversion structures, if necessary.

3. "*Closure plan*" means the plan which specifies the methods and schedule by which an operator will complete or cease disposal operations of a sanitary disposal project, prepare the area for long-term care, and make the area suitable for other uses.

4. "*Financial assurance instrument*" means an instrument submitted by an applicant to ensure the operator's financial capability to provide reasonable and necessary response during the lifetime of the project and for the thirty years following closure, and to provide for the closure of the facility and postclosure care required by rules adopted by the commission in the event that the operator fails to correctly perform closure and postclosure care requirements. The form may include the establishment of a secured trust fund, use of a cash or surety bond, or the obtaining of an irrevocable letter of credit.

5. "*Leachate*" means fluid that has percolated through solid waste and which contains contaminants consisting of dissolved or suspended materials, chemicals, or microbial waste products from the solid waste.

6. "*Lifetime of the project*" means the projected period of years that a landfill will receive waste, from the time of opening until closure, based on the volume of waste to be received projected at the time of submittal of the initial project plan and the calculated refuse capacity of the landfill based upon the design of the project.

7. "*Manufacturer*" means a person who by labor, art, or skill transforms raw material into a finished product or article of trade.

8. "*Postclosure*" and "*postclosure care*" mean the time and actions taken for the care, maintenance, and monitoring of a sanitary disposal project after closure that will prevent, mitigate, or minimize the threat to public health, safety, and welfare and the threat to the environment posed by the closed facility.

9. "*Postclosure plan*" means the plan which specifies the methods and schedule by which the operator will perform the necessary monitoring and care for the area after closure of a sanitary disposal project.

10. "*Private agency*" means a private agency as defined in section 28E.2.

11. "*Public agency*" means a public agency as defined in section 28E.2.

12. "*Resource recovery system*" means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.

13. "*Sanitary disposal project*" means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.

14. "*Sanitary landfill*" means a sanitary disposal project where solid waste is buried between layers of earth.

15. "*Solid waste*" means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities. Solid waste may include vehicles, as defined by section 321.1, subsection 1. However, this division does not prohibit the use of dirt, stone, brick, or similar inorganic material for fill, landscaping, excavation or grading at places other than a sanitary disposal. Solid waste does not include hazardous waste as defined in section 455B.411 or source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

87 Acts, ch 225, §404 HF 631

NEW subsections 1-9 and former subsections 1-6 alphabetized

455B.301A Declaration of policy.

1. The protection of the health, safety, and welfare of Iowans and the protection of the environment require the safe and sanitary disposal of solid wastes. An effective and efficient solid waste disposal program protects the environment and the public, and provides the most practical and beneficial use of the material and energy values of solid waste. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and a reduction in the reliance upon land disposal of solid waste are encouraged. In the promotion of these goals, the following waste management hierarchy in descending order of preference, is established as the solid waste management policy of the state:

- a. Volume reduction at the source.
- b. Recycling and reuse.
- c. Combustion with energy recovery and refuse-derived fuel.
- d. Combustion for volume reduction.
- e. Disposal in sanitary landfills.

2. In the implementation of the solid waste management policy, the state shall:

- a. Establish and maintain a cooperative state and local program of project planning, and technical and financial assistance to encourage comprehensive solid waste management.

b. Utilize the capabilities of private enterprise as well as the services of public agencies to accomplish the desired objectives of an effective solid waste management program.

87 Acts, ch 225, §405 HF 631
NEW section

455B.304 Rules established.

The commission shall establish rules for the proper administration of this part 1 of division IV which shall reflect and accommodate as far as is reasonably possible the current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of this part, and which shall take into consideration the factors, including others which it deems proper, such as existing physical conditions, topography, soils and geology, climate, transportation, and land use, and which shall include but are not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of this part.

The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge is not subject to criminal liability for acts or omissions in connection with a sale, and is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307. The rules promulgated under this paragraph shall be generally consistent with those rules of the department existing on January 1, 1982 regarding the land application of municipal sewage sludge except that they may provide for different methods of application for wet sludge and dry sludge.

The commission shall adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill. The rules shall prohibit land burial or disposal by land application of wet sewer sludge at a sanitary landfill.

The commission shall adopt rules requiring that each sanitary disposal project established pursuant to section 455B.302 and permitted pursuant to section 455B.305 install and maintain a sufficient number of groundwater monitoring wells to adequately determine the quality of the groundwater and the impact the sanitary disposal project, if any, is having on the groundwater adjacent to the sanitary disposal project site.

The commission shall adopt rules requiring a schedule of monitoring of the quality of groundwater adjacent to the sanitary disposal project from the groundwater monitoring wells installed in accordance with this section during the period the sanitary disposal project is in use. Schedules of monitoring may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operation characteristics, and volumes and types of wastes handled at the sanitary disposal project site.

The commission shall, by rule, require continued monitoring of groundwater pursuant to this section for a period of thirty years after the sanitary disposal project is closed. The commission may prescribe a lesser period of monitoring duration and frequency in consideration of the potential or lack thereof for groundwater contamination from the sanitary disposal project. The commission

may extend the thirty-year monitoring period on a site-specific basis by adopting rules specifically addressing additional monitoring requirements for each sanitary disposal project for which the monitoring period is to be extended.

The commission shall adopt rules which may require the installation of shafts to relieve the accumulation of gas in a sanitary disposal project.

The commission shall adopt rules which establish closure, postclosure, leachate control and treatment, and financial assurance standards and requirements and which establish minimum levels of financial responsibility for sanitary disposal projects.

The commission shall adopt rules which establish the minimum distance between tiling lines and a sanitary landfill in order to assure no adverse effect on the groundwater.

The commission shall adopt rules for the distribution of grants to cities, counties, central planning agencies, and public or private agencies working in cooperation with cities or counties, for the purpose of solid waste management. The rules shall base the awarding of grants on a project's reflection of the solid waste management policy and hierarchy established in section 455B.301A, the proposed amount of local matching funds, and community need.

By July 1, 1990, a sanitary landfill disposal project operating with a permit shall have a trained, tested, and certified operator. A certification program shall be devised or approved by rule of the department.

87 Acts, ch 225, §406-408 HF 631
Unnumbered paragraphs 3 and 6 amended
NEW unnumbered paragraphs 8-11

455B.305 Issuance or renewal of permits by director.

1. The director shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects.

A permit shall be issued by the director or at the director's direction, by a local board of health, for each sanitary disposal project operated in this state. The permit shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating the project. Each sanitary disposal project shall be inspected annually by the department or a local board of health. The permits issued pursuant to this section are in addition to any other licenses, permits or variances authorized or required by law, including, but not limited to, chapter 358A. A permit may be suspended or revoked by the director if a sanitary disposal project is found not to meet the requirements of part 1 or rules issued under part 1. The suspension or revocation of a permit may be appealed to the department.

2. Beginning July 1, 1988, the director shall not issue a permit for the construction or operation of a new sanitary landfill unless the permit applicant has filed a plan as required by section 455B.306.

3. Beginning July 1, 1988, the director shall not renew or reissue a permit which had been initially issued prior to that date for a sanitary landfill, unless the permit applicant has filed a plan as required by section 455B.306.

4. Beginning July 1, 1994, the director shall not renew or reissue a permit which had been initially issued or renewed prior to that date for a sanitary landfill, unless and until the permit applicant documents that steps are being taken to begin implementing the plan filed pursuant to section 455B.306. However, a permit may be issued for the construction and operation of a new sanitary landfill in accordance with subsection 2.

5. Beginning July 1, 1997, the director shall not renew or reissue a permit which had been renewed or reissued prior to that date for a sanitary landfill, unless and until the permit applicant documents that alternative methods of solid waste disposal other than use of a sanitary landfill have been implemented as set forth in the plan filed pursuant to section 455B.306. However, the director may issue a permit for the construction and operation of a new sanitary landfill in

accordance with subsection 2 and a permit may be renewed or reissued for a sanitary landfill which had received an initial permit but the permit had not been previously renewed or reissued prior to July 1, 1997 in accordance with subsection 3.

After July 1, 1997, however, no new landfill permits shall be issued unless the applicant certifies that the landfill is needed as a part of an alternative disposal method, or unless the applicant provides documentation which satisfies the director that alternatives have been studied and are not either technically or economically feasible. The decision of the director is subject to review by the commission at its next meeting.

6. Beginning July 1, 1992, the director shall not issue, renew, or reissue a permit for a sanitary landfill unless the sanitary landfill is equipped with a leachate control system. The director may exempt a permit applicant from this requirement if the director determines that certain conditions regarding, but not limited to, existing physical conditions, topography, soil, geology, and climate, are such that a leachate control system is unnecessary.

87 Acts, ch 225, §409, 410 HF 631
 Subsection 5, NEW unnumbered paragraph 2
 NEW subsection 6

455B.306 Plans filed.

1. A city, county, and a private agency operating or planning to operate a sanitary disposal project shall file with the director a comprehensive plan detailing the method by which the city, county, or private agency will comply with this part 1. The director shall review each comprehensive plan submitted and may reject, suggest modification, or approve the proposed plan. The director shall aid in the development of comprehensive plans for compliance with this part. The director shall make available to a city, county, and private agency appropriate forms for the submission of comprehensive plans and may hold hearings for the purpose of implementing this part. The director and governmental agencies with primary responsibility for the development and conservation of energy resources shall provide research and assistance, when cities and counties operating or planning to operate sanitary disposal projects request aid in planning and implementing resource recovery systems. A comprehensive plan filed by a private agency operating or planning to operate a sanitary disposal project required pursuant to section 455B.302 shall be developed in cooperation and consultation with the city or county responsible to provide for the establishment and operation of a sanitary disposal project.

2. The plan required by subsection 1 shall be filed with the department at the time of initial application for the construction and operation of a sanitary disposal project and shall be updated and refiled with the department at the time of each subsequent application for renewal or reissuance of a previously issued permit.

3. A comprehensive plan filed pursuant to this section in conjunction with an application for issuance, renewal, or reissuance of a permit for a sanitary disposal project shall incorporate and reflect the waste management hierarchy of the state solid waste management policy and shall at a minimum address the following general topics to the extent appropriate to the technology employed by the applicant at the sanitary disposal project:

- a. The extent to which solid waste is or can be recycled.
- b. The economic and technical feasibility of using other existing sanitary disposal project facilities in lieu of initiating or continuing the sanitary landfill for which the permit is being sought.
- c. The expected environmental impact of alternative solid waste disposal methods, including the use of sanitary landfills.
- d. A specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact.

4. In addition to the above requirements, the following specific areas must be addressed in detail in the comprehensive plan:

a. A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure adopted by rule by the commission. The plan shall include, but is not limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting these costs. The postclosure plan shall reflect the thirty-year time period requirement for postclosure responsibility.

b. A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of control and treatment in order to meet the requirements of section 455B.305, subsection 6.

c. A financial plan detailing the actual cost of the sanitary disposal project and including the funding sources of the project. In addition to the submittal of the financial plan filed pursuant to this subsection, the operator of an existing sanitary landfill shall submit an annual financial statement to the department.

d. An emergency response and remedial action plan including established provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment, and the identification of possible occurrences that may endanger human health and environment.

5. In addition to the comprehensive plan filed pursuant to subsection 1, a person operating or proposing to operate a sanitary disposal project shall provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility beginning July 1, 1988.

a. The financial assurance instrument shall meet all requirements adopted by rule by the commission, and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Following the cessation of operation or closure of a sanitary disposal project, neither the guarantor nor the operator shall cancel, revoke, or disburse the financial assurance instrument or allow the instrument to terminate until the operator is released from closure, postclosure, and monitoring responsibilities.

b. The operator shall maintain closure, and postclosure accounts. The commission shall adopt by rule the amounts to be contributed to the accounts based upon the amount of solid waste received by the facility. The accounts established shall be specific to the facility.

(1) Money in the accounts shall not be assigned for the benefit of creditors with the exception of the state.

(2) Money in an account shall not be used to pay any final judgment against a licensee arising out of the ownership or operation of the site during its active life or after closure.

(3) Conditions under which the department may gain access to the accounts and circumstances under which the accounts may be released to the operator after closure and postclosure responsibilities have been met, shall be established by the commission.

c. The commission shall adopt by rule the minimum amounts of financial responsibility for sanitary disposal projects.

d. Financial assurance instruments may include instruments such as cash or surety bond, a letter of credit, a secured trust fund, or a corporate guarantee.

e. The annual financial statement submitted to the department pursuant to subsection 4, paragraph "c", shall include the current amounts established in each of the accounts and the projected amounts to be deposited in the accounts in the following year.

87 Acts, ch 225, §411-414 HF 631
See Code editor's note
Subsections 1-3 amended
NEW subsections 4 and 5

455B.307 Dumping—where prohibited.

1. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste resulting from its own residential, farming, manufacturing, mining, or commercial activities at any place other than a sanitary disposal project approved by the director unless the agency has been granted a permit by the department which allows the dumping or depositing of solid waste on land owned or leased by the agency. The department shall adopt rules regarding the permitting of this activity which shall provide that the public interest is best served, but which may be based upon criteria less stringent than those regulating a public sanitary disposal project provided that the rules adopted meet the groundwater nondegradation goal specified in section 455E.4. The comprehensive plans for these facilities may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operations characteristics, and volumes and types of waste handled at the disposal site. The director may issue temporary permits for dumping or disposal of solid waste at disposal sites for which an application for a permit to operate a sanitary disposal project has been made and which have not met all of the requirements of part 1 of this division and the rules adopted by the commission if a compliance schedule has been submitted by the applicant specifying how and when the applicant will meet the requirements for an operational sanitary disposal project and the director determines the public interest will be best served by granting such temporary permit.

2. The director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules adopted pursuant to the part. The attorney general shall, on request of the department, institute any legal proceedings necessary in obtaining compliance with an order of the commission or the director or prosecuting any person for a violation of the provisions of the part or rules issued pursuant to the part.

3. Any person who violates any provision of part 1 of this division or any rule or any order adopted or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty. The amount of the civil penalty shall be based upon the toxicity and severity of the solid waste as determined by rule, but not to exceed five hundred dollars for each day of such violation.

87 Acts, ch 225, §415 HF 631
Section amended

455B.309 Groundwater fund. Repealed by 87 Acts, ch 225, §116. HF 631
See §455E.11.

455B.310 Tonnage fee imposed.

1. Except as provided in subsection 3, the operator of a sanitary landfill shall pay to the department a tonnage fee for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill during the preceding reporting period. The department shall determine by rule the volume which is equivalent to a ton of waste.

2. The tonnage fee is one dollar and fifty cents per ton of solid waste for the year beginning July 1, 1988 and shall increase annually in the amount of fifty cents per ton through July 1, 1992. The city or county providing for the

establishment and operation of the sanitary landfill may charge an additional tonnage fee for the disposal of solid waste at the sanitary landfill, to be used exclusively for the development and implementation of alternatives to sanitary landfills.

3. Solid waste disposal facilities with special provisions which limit the site to the disposal of construction and demolition waste and solid waste materials approved by the department for lining or capping or for construction berms, dikes or roads in a sanitary disposal project or sanitary landfill or which limit the site to the disposal of excess fly ash used in the reclamation of strip mined land are exempt from the tonnage fees imposed under this section.

4. All tonnage fees received by the department under this section shall be deposited in the solid waste account of the groundwater protection fund created under section 455E.11.

5. Fees imposed by this section beginning July 1, 1988 shall be paid to the department on a quarterly basis. The initial payment of fees collected beginning July 1, 1988 shall be paid to the department on January 1, 1989 and on a quarterly basis thereafter. The payment shall be accompanied by a return in the form prescribed by the department.

6. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section shall be assessed a penalty of fifteen percent of the fee due. The penalty shall be paid in addition to the fee due.

7. The department shall grant exemptions from the fee requirements of subsection 2 for receipt of solid waste meeting all of the following criteria:

a. Receipt of the solid waste is pursuant to a written contract between the owner or operator of the sanitary landfill and another person.

b. The contract was lawfully executed prior to January 1, 1987.

c. The contract expressly prohibits an increase in the compensation or fee payable to the owner or operator of the landfill and does not allow voluntary cancellation or renegotiation of the compensation or fee during the term of the contract.

d. The contract has not been amended at any time after January 1, 1987.

e. The owner or operator of the sanitary landfill applying for exemption demonstrates to the satisfaction of the department that good faith efforts were made to renegotiate the contract notwithstanding its terms, and has been unable to agree on an amendment allowing the fee provided in subsection 2 to be added to the compensation or fee provisions of the contract.

f. Applications for exemption must be submitted on forms provided by the department with proof of satisfaction of all criteria.

g. Notwithstanding the time specified within the contract, an exemption from payment of the fee increase requirements for a multiyear contract shall terminate by January 1, 1989.

8. In the case of a sanitary disposal project other than a sanitary landfill, no tonnage fee shall apply for five years beginning July 1, 1987 or for five years from the commencement of operation, whichever is later. By July 1, 1992, the department shall provide the general assembly with a recommendation regarding appropriate fees for alternative sanitary disposal projects.

87 Acts, ch 225, §416-418 HF 631

Appropriation of moneys in fund prior to December 31, 1987; 87 Acts, ch 225, §422 HF 631

Subsections 2, 4, and 5 amended

NEW subsections 7 and 8

455B.311 Grants.

The director, with the approval of the commission, may make grants to cities, counties, or central planning agencies representing cities and counties or combinations of cities, counties, or central planning agencies from funds reserved under and for the purposes specified in section 455E.11, subsection 2, paragraph "a", subject to all of the following conditions:

1. Application for grants shall be in a form and contain information as prescribed by rule of the department.

2. Grants shall only be awarded to a city or a county; however, a grant may be made to a central planning agency representing more than one city or county or combination of cities or counties for the purpose of planning and implementing regional solid waste management facilities or may be made to private or public agencies working in cooperation with a city or county. The department shall award grants, in accordance with the rules adopted by the commission, based upon a proposal's reflection of the solid waste management policy and hierarchy established in section 455B.301A. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants may be awarded at a maximum cost-share level of ninety percent with a preference given for regional or shared projects and a preference given to projects involving environmentally fragile areas which are particularly subject to groundwater contamination. Grants shall be awarded in a manner which will distribute the grants geographically throughout the state.

3. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants for less than a county-wide planning area shall be limited to twenty-five percent state funds, for a single-county planning area the state funds shall be limited to fifty percent, and for a two-county planning area the state funds shall be limited to seventy-five percent. For each additional county above a two-county planning area, the maximum allowable state funds shall be increased by an additional five percent, up to a maximum of ninety percent state funds.

4. A city, county, or central planning agency on behalf of a city or county may not receive more than one grant under this section in any three-year period.

5. The director, with the approval of the commission, may deny a grant application if in the judgment of the director the applicant could not reasonably be expected to adequately and properly complete the plan for which the grant is requested or the applicant could not reasonably be expected to implement a planned sanitary disposal project.

87 Acts, ch 225, §115, 419 HF 631
Unnumbered paragraph 1 amended
Subsection 2 amended

455B.312 Waste abatement program.

1. If the department receives a complaint that certain products or packaging when disposed of are incompatible with an alternative method of managing solid waste and with the solid waste management policy, the director shall investigate the complaint. If the director determines that the complaint is well-founded, the department shall inform the manufacturer of the product or packaging and attempt to resolve the matter by informal negotiations.

2. If informal procedures fail to result in resolution of the matter, the director shall hold a hearing between the affected parties. Following the hearing, if it is determined that removal of the product or packaging is critical to the utilization of the alternative method of disposing of solid waste, the director shall issue an order setting out the requirements for an abatement plan to be prepared by the manufacturer within the time frame established in the order.

If an acceptable plan is not prepared, the plan is not implemented, or the problem otherwise continues unabated, the attorney general shall take actions authorized by law to secure compliance.

87 Acts, ch 225, §420 HF 631
NEW section

455B.313 through 455B.330 Reserved.

455B.422 Acquisition and lease of sites. Repealed by 87 Acts, ch 180, §12. SF 396 See §455B.486, 455B.487.

455B.473 Report of existing and new tanks—fee.

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.

2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.

4. An owner or operator of a storage tank described in section 455B.471, subsection 6, paragraph "a", which brings the tank into use after July 1, 1987, shall notify the department of the existence of the tank within thirty days. The registration of the tank shall be accompanied by a fee of ten dollars to be deposited in the storage tank management account. A tank which is existing before July 1, 1987, shall be reported to the department by July 1, 1989. Tanks under this section installed on or following July 1, 1987, shall comply with underground storage tank regulations adopted by rule by the department.

5. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11. All moneys collected pursuant to this section prior to July 1, 1987, which have not been expended, shall be deposited in the storage tank management account.

6. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.

7. A person who deposits a regulated substance in an underground storage tank shall notify the owner or operator in writing of their notification requirements pursuant to this section.

8. A person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the tank in writing of the owner's notification requirements pursuant to this section.

9. It shall be unlawful to deposit a regulated substance in an underground storage tank which has not been registered pursuant to subsections 1 through 6.

The department shall furnish the owner or operator of an underground storage tank with a registration tag for each underground storage tank registered with the department. The owner or operator shall affix the tag to the fill pipe of each registered underground storage tank. A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the

existence or absence of the registration tag. If a registration tag is not affixed to the underground storage tank fill pipe, the person conveying or depositing the regulated substance may deposit the regulated substance in the unregistered tank provided that the deposit is allowed only in the single instance, that the person reports the unregistered tank to the department of natural resources, and that the person provides the owner or operator with an underground storage tank registration form and informs the owner or operator of the underground storage tank registration requirements. The owner or operator is allowed fifteen days following the report to the department of the owner's or operator's unregistered tank to comply with the registration requirements. If an owner or operator fails to register the reported underground storage tank during the fifteen-day period, the owner or operator shall pay a fee of twenty-five dollars upon registration of the tank.

87 Acts, ch 225, §604, 605 HF 631

NEW subsections 4 and 9 and former subsections 4-7 renumbered as 5-8

Subsection 5 amended

455B.474 Duties of commission—rules.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:

a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

b. Maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.

c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

d. Taking corrective action in response to a release or threatened release from an underground storage tank including appropriate testing of drinking water which may be contaminated by the release.

e. The closure of tanks to prevent any future release of a regulated substance into the environment.

f. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to May 1, 1986. The commission shall adopt these rules not later than April 1, 1986; however, the effective date of the rules adopted shall be May 1, 1988. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for

compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with A.S.T.M., standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after May 1, 1986. The commission shall adopt these rules not later than January 1, 1986, however, the effective date of the rules adopted shall be May 1, 1986. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 4. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. §1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. §1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. §7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. §2606.

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph "f" and subsection 3, paragraph "d". It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph "f" and subsection 3, paragraph "d" be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

87 Acts, ch 225, §606 HF 631
Subsection 2, NEW paragraph e

455B.479 Storage tank management fee.

An owner or operator of an underground storage tank shall pay an annual storage tank management fee of fifteen dollars per tank of over one thousand one hundred gallons capacity. The fees collected shall be deposited in the storage tank management account of the groundwater protection fund.

87 Acts, ch 225, §607 HF 631
NEW section

PART 9
WASTE MANAGEMENT AUTHORITY
Legislative findings and purpose; 87 Acts; ch 180, §2 SF 396

455B.480 Short title.

This part may be cited as the "*Waste Management Authority Act*".

87 Acts, ch 180, §1 SF 396
NEW section

455B.481 Waste management policy.

The purpose of this part is to promote the proper and safe storage, treatment, and disposal of solid, hazardous, and low-level radioactive wastes in Iowa. The management of these wastes generated within Iowa is the responsibility of Iowans. It is the intent of the general assembly that Iowans assume this responsibility to the extent consistent with the protection of public health, safety, and the environment, and that Iowans insure that waste management practices, as alternatives to land disposal, including source reduction, recycling, compaction, incineration, and other forms of waste reduction, are employed.

It is also the intent of the general assembly that a comprehensive waste management plan be established by the waste management authority which includes: the determination of need and adequate regulatory controls prior to the initiation of site selection; the process for selecting a superior site determined to be necessary; the establishment of a process for a site community to submit or present data, views, or arguments regarding the selection of the operator and the technology that best ensures proper facility operation; the prohibition of shallow land burial of hazardous and low-level radioactive wastes; the establishment of a regulatory framework for a facility; and the establishment of provisions for the safe and orderly development, operation, closure, postclosure, and long-term monitoring and maintenance of the facility.

87 Acts, ch 180, §3 SF 396
Legislative findings and purpose; 87 Acts, ch 180, §2 SF 396
NEW section

455B.482 Definitions.

As used in this part unless the context otherwise requires:

1. "*Disposal*" means the isolation of waste from the biosphere in a permanent facility designed for that purpose.
2. "*Facilities*" means land and improvements on land, buildings and other structures, and other appurtenances used for the management of solid, toxic, hazardous, or low-level radioactive wastes, including but not limited to waste collection sites, waste transfer stations, waste reclamation and recycling centers, waste processing centers, waste treatment centers, waste storage sites, waste reduction and compaction centers, waste incineration centers, waste detoxification centers, and waste disposal sites.
3. "*Hazardous waste*" means hazardous waste as defined in section 455B.411, subsection 4, and under section 455B.464.
4. "*Long-term monitoring and maintenance*" means the continued observation and care of a facility after closure in order to ensure that the site poses no threat to the public health, the groundwater, and the environment. In the case of a low-level radioactive waste facility, the time period constituting "*long-term*" is the number of years of monitoring and maintenance based upon the half-life properties of the wastes, and in the case of a hazardous waste facility is the number of years based upon the projected active toxicity of the waste.
5. "*Low-level radioactive waste*" means low-level radioactive waste as defined in section 8C.1, article II, paragraph "i", and as defined in the federal Low-Level Radioactive Waste Policy Amendments Act, 42 U.S.C. §2021.
6. "*Management of waste*" means the storage, transportation, treatment, or disposal of waste.
7. "*Person*" means person as defined in section 4.1.

8. "Regulatory agency" means a federal, state, or local agency that issues a license or permit required for the siting, construction, operation, or maintenance of a facility pursuant to federal or state statute or rule, or local ordinance or resolution.

9. "Site" means the geographic location of a facility.

10. "Solid waste" means solid waste as defined in section 455B.301, subsection 15.

11. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

12. "Storage" means the temporary holding of waste for treatment or disposal.

13. "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

14. "Waste" means solid waste, hazardous waste, and low-level radioactive waste as defined in this section.

15. "Waste management authority" means the waste management authority established within the department of natural resources.

87 Acts, ch 180, §4 SF 396
NEW section

455B.483 Waste management authority created.

A waste management authority is created within the department of natural resources for the purpose of carrying out the provisions of this part. The waste management authority is under the immediate direction and supervision of the director of the department of natural resources.

87 Acts, ch 180, §5 SF 396
NEW section

455B.484 Duties of the authority.

The authority shall:

1. Recommend to the commission the adoption of rules necessary to implement this part.

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit into the waste management authority trust fund to be used for programs relating to the duties of the division under this part.

3. Administer and coordinate the waste management trust fund created under this part.

4. Enter into contracts and agreements, with the approval of the commission for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out its duties under this part.

5. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts or public-private compacts relating to the ownership, operation, management, or funding of a facility. Any agreement is subject to the approval of the commission.

6. Review, propose, and recommend legislation relating to the proper and safe management of waste.

7. Establish a central repository and information clearinghouse within the state for the collection and dissemination of data and information pertaining to the proper and safe management of waste.

8. Develop, sponsor, and assist in the implementation of public education and information programs on proper and safe management of waste in cooperation with other public and private agencies as deemed appropriate.

9. Include in the annual report to the governor and the general assembly required by section 455A.4, subsection 1, paragraph "d", information outlining the activities of the authority in carrying out programs and responsibilities under this part, and identifying trends and developments in the management of waste.

10. Submit a report to the general assembly by January 1, 1988, regarding the feasibility and financial ramifications of limiting the type of waste accepted by a hazardous waste facility acquired or operated pursuant to this chapter.

11. Solicit proposals from public and private agencies to conduct hazardous waste research, and to develop and implement storage, treatment, and other hazardous waste management practices including but not limited to source reduction, recycling, compaction, incineration, fuel recovery, and other alternatives to land disposal of hazardous waste. In the acceptance of a proposal, preference shall be given to Iowa agencies pursuant to chapter 73.

12. Conduct a comprehensive study of the current availability of hazardous waste disposal methods and sites, the current and projected generation of hazardous waste including but not limited to the types of hazardous waste generated and the sources of hazardous waste generation; alternatives to land disposal of hazardous waste including but not limited to source reduction, recycling, compaction, incineration, and fuel recovery; and integrated approaches to pollution management to ensure that the problems associated with hazardous waste do not become air or water problems; and alternative management and financing approaches for a state hazardous waste site.

13. a. Develop a comprehensive plan for the establishment of a small business assistance center for the safe and economic management of solid and hazardous substances. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The plan shall provide that the center's program include:

(1) The provision of information regarding the safe use and economic management of solid and hazardous substances to small businesses which generate the substances.

(2) The dissemination of information to public and private agencies regarding state and federal solid and hazardous substances regulations, and assistance in achieving compliance with these regulations.

(3) Advisement and consultation regarding the proper storage, handling, treatment, reuse, recycling, and disposal methods of solid and hazardous substances. The center shall promote alternatives to land disposal of solid and hazardous substances including but not limited to source reduction, recycling, compaction, incineration, and fuel recovery.

(4) The identification of the advantages of proper substance management relative to liability and operational costs of a particular small business.

(5) Assistance in the providing of capital formation in order to comply with state and federal regulations.

b. Moneys appropriated from the oil overcharge account of the groundwater protection fund shall be used to develop the comprehensive plan for the small business assistance center for the safe and economic management of solid and hazardous substances.

c. In solicitation of proposals for the implementation of the comprehensive plan, the waste management authority shall give preference to cooperative

proposals which incorporate and utilize the participation of the universities under the control of the state board of regents.

87 Acts, ch 180, §6 SF 396
Small business assistance center; see also §268.4
NEW section

455B.485 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of this part.
2. Adopt, modify, or repeal rules necessary to implement this part pursuant to chapter 17A.
3. Approve the budget request for the waste management authority prior to submission to the department of management. The commission may increase, decrease, or strike any proposed expenditure within the waste management authority budget request before granting approval.
4. Recommend legislative action which may be required for the safe and proper management of waste, for the acquisition or operation of a facility, for the funding of a facility, to enter into interstate agreements for the management of a facility, and to improve the operation of the waste management authority.
5. Approve all contracts and agreements, in excess of twenty-five thousand dollars, under this part between the waste management authority and other public or private persons or agencies.

87 Acts, ch 180, §7 SF 396
NEW section

455B.486 Facility siting.

1. The authority shall identify and recommend to the commission suitable sites for locating facilities for the treatment, storage, or disposal of hazardous waste within this state. The authority shall use site selection criteria adopted by the environmental protection commission pursuant to section 455B.487 in identifying these sites. The commission shall accept or reject the recommendation of the authority. If the commission rejects the recommendation of the authority, the commission shall state its reasons for rejecting the recommendation.

2. The commission shall adopt rules establishing criteria for the identification of sites which are suitable for the operation of low-level radioactive waste disposal facilities. The authority shall apply these criteria, once adopted, to identify and recommend to the commission sites suitable for locating facilities for the disposal of low-level radioactive waste. The commission shall accept or reject the recommendation of the authority. If the commission rejects the recommendation of the authority, the commission shall state its reasons for rejecting the recommendation.

87 Acts, ch 180, §8 SF 396
NEW section

455B.487 Facility acquisition and operation.

The commission shall adopt rules establishing criteria for the identification of land areas or sites which are suitable for the operation of facilities for the management of hazardous and low-level radioactive wastes. Upon request, the department shall assist in locating suitable sites for the location of a facility. The commission may purchase or condemn land to be leased or used for the operation of a facility subject to chapter 471. Consideration for a contract for purchase of land shall not be in excess of funds appropriated by the general assembly for that purpose. The commission may lease land purchased under this section to any person including the state or a state agency. This section authorizes the state to own or operate hazardous waste facilities and low-level radioactive waste facilities, subject to the approval of the general assembly.

The terms of the lease or contract shall establish responsibility for long-term monitoring and maintenance of the site. The commission shall require that the

lessee or operator post bond or provide proof of sufficient insurance coverage, as determined by the commission to be reasonably necessary to protect the state against liabilities arising from the storage of wastes, abandonment of the facility, facility accidents, failure of the facility, or other liabilities which may arise.

The terms of the lease or contract shall also require that the lessee or operator of the facility pay an annual fee to the state, as established by the commission, to cover facility monitoring costs, and shall require that the lessee or operator establish a long-term monitoring and maintenance fund in which the lessee or operator shall deposit annually an amount specified by the commission. The fund shall be used to pay closure, long-term monitoring and maintenance, and contingency costs.

The lease agreement or contract shall provide for a local review and monitoring committee established by the county or municipal entity governing the jurisdiction in which the facility is located. Prior to the approval of a lease agreement or contract the local committee shall review the application of the prospective lessee or operator and shall determine the suitability of the proposed site for the facility. The local committee may inspect the facility during operation and may make recommendations regarding the operation and closure of the facility. The commission shall establish a surtax paid by the lessee or operator of a facility to the local governmental entity, and retained by the local governmental entity in which the facility is located. The lessee or operator of the facility shall provide funding for the implementation of the duties of the local committee.

The lessee or operator is subject to all applicable permit and licensing requirements. The leasehold interest, including improvements made to the property, shall be listed, assessed, and valued as any other real property as provided by law.

Facilities acquired or operated pursuant to this section shall comply with applicable federal and state statutes, local ordinances, and regulations adopted by regulatory agencies to the extent required by law.

The purchase, condemnation, use, or lease of land for the management of wastes, shall be approved by the general assembly prior to the purchase, condemnation, use, or lease of the land.

Facilities acquired or operated pursuant to this section may be used for regional, statewide or multistate management of wastes.

Facilities acquired or operated pursuant to this section shall not be used for the purpose of shallow land burial of wastes as a means of disposal.

An operator of a facility acquired or operated pursuant to this section shall require that a person, prior to the use of the facility, submit proof that reasonable and good faith measures have been taken to reduce the generation of waste.

A hazardous waste facility acquired or operated pursuant to this section shall be operated in accordance with the following schedule:

1. The initial fee paid by a person depositing hazardous waste at the facility shall be increased by ten percent per ton upon receipt of twenty-five percent of the waste capacity of the facility.
2. The initial fee paid by a person depositing hazardous waste at the facility shall be increased by twenty-five percent per ton upon receipt of fifty percent of the waste capacity of the facility.
3. Upon receipt of fifty percent of the waste capacity of the facility, the receipt of waste shall be limited to hazardous waste generated within the state of Iowa. If an agreement has been established between the owner or operator of the

hazardous waste facility and an out-of-state generator of hazardous waste, this limitation is null and void.

87 Acts, ch 180, §9 SF 396
NEW section

455B.488 Household hazardous waste collection and disposition.

The authority shall develop, sponsor, and assist in conducting local, regional, or statewide programs for the receipt or collection and proper management of hazardous wastes from households and farms. In conducting such events the authority may establish limits on the types and amounts of wastes that will be collected, and may establish a fee system for acceptance of wastes in quantities exceeding the limits established pursuant to this section.

87 Acts, ch 180, §10 SF 396
NEW section

455B.489 Waste management authority fund.

A waste management authority fund is created within the state treasury. Moneys received by the authority from fees, general revenue, federal funds, awards, wills, bequests, gifts, or other moneys designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Any interest and earnings on investments from money in the fund shall be credited to the fund, section 453.7 notwithstanding.

87 Acts, ch 180, §11 SF 396
NEW section

455B.490 Reserved.

CHAPTER 455C

BEVERAGE CONTAINERS DEPOSIT

455C.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Beverage*" means wine as defined in section 123.3, subsection 7, alcoholic liquor as defined in section 123.3, subsection 8, beer as defined in section 123.3, subsection 10, mineral water, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.
2. "*Beverage container*" means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.
3. "*Consumer*" means any person who purchases a beverage in a beverage container for use or consumption.
4. "*Dealer*" means any person who engages in the sale of beverages in beverage containers to a consumer.
5. "*Distributor*" means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales. The alcoholic beverages division of the department of commerce is not a distributor for the purpose of this chapter.
6. "*Manufacturer*" means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.
7. "*Director*" means the director of the department.
8. "*Department*" means the department of natural resources created under section 455A.2.
9. "*Commission*" means the environmental protection commission of the department.

10. "Nonrefillable beverage container" means a beverage container not intended to be refilled for sale by a manufacturer.

87 Acts, ch 22, §12 SF 298
Subsection 5 amended

455C.2 Refund values.

1. Except purchases of alcoholic liquor as defined in section 123.3, subsection 8, by holders of class "A", "B", "C", and "E" liquor control licenses, a refund value of not less than five cents shall be paid by the consumer on each beverage container sold in this state by a dealer for consumption off the premises. Upon return of the empty beverage container upon which a refund value has been paid to the dealer or person operating a redemption center and acceptance of the empty beverage container by the dealer or person operating a redemption center, the dealer or person operating a redemption center shall return the amount of the refund value to the consumer.

2. In addition to the refund value provided in subsection 1 of this section, a dealer, or person operating a redemption center, who redeems empty beverage containers shall be reimbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept such container.

87 Acts, ch 22, §13 SF 298
Subsection 1 amended

455C.4 Refusal to accept containers.

1. Except as provided in section 455C.5, subsection 3, a dealer, a person operating a redemption center, a distributor or a manufacturer may refuse to accept any empty beverage container which does not have stated on it a refund value as provided under section 455C.2.

2. A dealer may refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the department approving a redemption center under section 455C.6.

3. A dealer or a distributor may not refuse to accept and to pay the refund value of an empty wine container which is marked to indicate that it was sold by a state liquor store.

4. A class "E" liquor control licensee may refuse to accept and to pay the refund value on an empty alcoholic liquor container from a dealer or a redemption center or from a person acting on behalf of or who has received empty alcoholic liquor containers from a dealer or a redemption center.

87 Acts, ch 22, §14, 15 SF 298
Amendments effective April 21, 1987
Subsection 3 amended
NEW subsection 4

455C.5 Refund value stated on container—exceptions.

1. Each beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, label or other method securely affixed to the container, the refund value of the container. The department shall specify, by rule, the minimum size of the refund value indication on the beverage containers.

2. A person, except a distributor, shall not import into this state after July 1, 1979 a beverage container which does not have securely affixed to the container the refund value indication. The provisions of this subsection do not apply if:

a. For beverage containers containing alcoholic liquor as defined in section 123.3, subsection 8, the total capacity of the containers is not more than one quart or, in the case of alcoholic liquor personally obtained outside the United States, one gallon.

b. For beverage containers containing beer as defined in section 123.3, subsection 10, the total capacity of the containers is not more than two hundred eighty-eight fluid ounces.

c. For all other beverage containers, the total capacity of the containers is not more than five hundred seventy-six fluid ounces.

3. The provisions of subsections 1 and 2 of this section do not apply to a refillable glass beverage container which has a brand name permanently marked on it and which has a refund value of not less than five cents, to any other refillable beverage container which has a refund value of not less than five cents and which is exempted by the director under rules adopted by the commission, or to a beverage container sold aboard a commercial airliner or passenger train for consumption on the premises.

87 Acts, ch 22, §16 SF 298
Subsection 1 amended

455C.11 Annual appropriation. Repealed by 87 Acts, ch 22, §17. SF 298
See 87 Acts, ch 22, §19.

CHAPTER 455E

GROUNDWATER PROTECTION

455E.1 Title.

This chapter shall be known and may be cited as the "Groundwater Protection Act".

87 Acts, ch 225, §101 HF 631
NEW section

455E.2 Definitions.

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

1. "Active cleanup" means removal, treatment, or isolation of a contaminant from groundwater through the directed efforts of humans.

2. "Commission" means the environmental protection commission created under section 455A.6.

3. "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance which does not occur naturally in groundwater or which naturally occurs at a lower concentration.

4. "Contamination" means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activities.

5. "Department" means the department of natural resources created under section 455A.2.

6. "Director" means the director of the department.

7. "Groundwater" means any water of the state, as defined in section 455B.171, which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

8. "Passive cleanup" means the removal or treatment of a contaminant in groundwater through management practices or the construction of barriers, trenches, and other similar facilities for prevention of contamination, as well as the use of natural processes such as groundwater recharge, natural decay, and chemical or biological decomposition.

87 Acts, ch 225, §102 HF 631
NEW section

455E.3 Findings.

The general assembly finds that:

1. Groundwater is a precious and vulnerable natural resource. The vast majority of persons in the state depend on groundwater as a drinking water

source. Agriculture, commerce, and industry also depend heavily on groundwater. Historically, the majority of Iowa's groundwater has been usable for these purposes without treatment. Protection of groundwater is essential to the health, welfare, and economic prosperity of all citizens of the state.

2. Many activities of humans, including the manufacturing, storing, handling, and application to land of pesticides and fertilizers; the disposal of solid and hazardous wastes; the storing and handling of hazardous substances; and the improper construction and the abandonment of wells and septic systems have resulted in groundwater contamination throughout the state.

3. Knowledge of the health effects of contaminants varies greatly. The long-term detriment to human health from synthetic organic compounds in particular is largely unknown but is of concern.

4. Any detectable quantity of a synthetic organic compound in groundwater is unnatural and undesirable.

5. The movement of groundwater, and the movement of contaminants in groundwater, are often difficult to ascertain or control. Decontamination is difficult and expensive to accomplish. Therefore, preventing contamination of groundwater is of paramount importance.

87 Acts, ch 225, §103 HF 631
NEW section

455E.4 Groundwater protection goal.

The intent of the state is to prevent contamination of groundwater from point and nonpoint sources of contamination to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

87 Acts, ch 225, §104 HF 631
NEW section

455E.5 Groundwater protection policies.

1. It is the policy of the state to prevent further contamination of groundwater from any source to the maximum extent practical.

2. The discovery of any groundwater contamination shall require appropriate actions to prevent further contamination. These actions may consist of investigation and evaluation or enforcement actions if necessary to stop further contamination as required under chapter 455B.

3. All persons in the state have the right to have their lawful use of groundwater unimpaired by the activities of any person which render the water unsafe or unpotable.

4. All persons in the state have the duty to conduct their activities so as to prevent the release of contaminants into groundwater.

5. Documentation of any contaminant which presents a significant risk to human health, the environment, or the quality of life shall result in either passive or active cleanup. In both cases, the best technology available or best management practices shall be utilized. The department shall adopt rules which specify the general guidelines for determining the cleanup actions necessary to meet the goals of the state and the general procedures for determining the parties responsible by July 1, 1989. Until the rules are adopted, the absence of rules shall not be raised as a defense to an order to clean up a source of contamination.

6. Adopting health-related groundwater standards may be of benefit in the overall groundwater protection or other regulatory efforts of the state. However, the existence of such standards, or lack of them, shall not be construed or utilized in derogation of the groundwater protection goal and protection policies of the state.

7. The department shall take actions necessary to promote and assure public confidence and public awareness. In pursuing this goal, the department shall make public the results of groundwater investigations.

8. Education of the people of the state is necessary to preserve and restore groundwater quality. The content of this groundwater protection education must assign obligations, call for sacrifice, and change some current values. Educational efforts should strive to establish a conservation ethic among Iowans and should encourage each Iowan to go beyond enlightened self-interest in the protection of groundwater quality.

87 Acts, ch 225, §105 HF 631
NEW section

455E.6 Legal effects—liability.

This chapter supplements other legal authority and shall not enlarge, restrict, or abrogate any remedy which any person or class of persons may have under other statutory or common law and which serves the purpose of groundwater protection. An activity that does not violate chapter 455B does not violate this chapter. In the event of a conflict between this section and another provision of this chapter, it is the intent of the general assembly that this section prevails.

Liability shall not be imposed upon an agricultural producer for the costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of any quantity of nitrates provided that application has been in compliance with soil test results and that the applicator has properly complied with label instructions for application of the fertilizer. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

Liability shall not be imposed upon an agricultural producer for costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of pesticide provided that the applicator has properly complied with label instructions for application of the pesticide and that the applicator has a valid appropriate applicator's license. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

87 Acts, ch 225, §106 HF 631
NEW section

455E.7 Primary administrative agency.

The department is designated as the agency to coordinate and administer groundwater protection programs for the state.

87 Acts, ch 225, §107 HF 631
NEW section

455E.8 Powers and duties of the director.

In addition to other groundwater protection duties, the director, in cooperation with soil and water conservation district commissioners and with other state and local agencies, shall:

1. Develop and administer a comprehensive groundwater monitoring network, including point of use, point of contamination, and problem assessment monitoring sites across the state, and the assessment of ambient groundwater quality.

2. Include in the annual report required by section 455A.4, the number and concentration of contaminants detected in groundwater. This information shall also be provided to the director of public health and the secretary of agriculture.

3. Report any data concerning the contamination of groundwater by a contaminant not regulated under the federal Safe Drinking Water Act, 42 U.S.C. §300(f) et seq. to the United States environmental protection agency along with a request to establish a maximum contaminant level and to conduct a risk assessment for the contaminant.

4. Complete groundwater hazard mapping of the state and make the results available to state and local planning organizations by July 1, 1991.

5. Establish a system or systems within the department for collecting, evaluating, and disseminating groundwater quality data and information.

6. Develop and maintain a natural resource geographic information system and comprehensive water resource data system. The system shall be accessible to the public.

7. Develop and adopt by administrative rule, criteria for evaluating groundwater protection programs by July 1, 1988.

8. Take any action authorized by law, including the investigatory and enforcement actions authorized by chapter 455B, to implement the provisions of this chapter and the rules adopted pursuant to this chapter.

9. Disseminate data and information, relative to this chapter, to the public to the greatest extent practical.

10. Develop a program, in consultation with the department of education and the department of environmental education of the University of Northern Iowa, regarding water quality issues which shall be included in the minimum program required in grades seven and eight pursuant to section 256.11, subsection 4.

87 Acts, ch 225, §108 HF 631
NEW section

455E.9 Powers and duties of the commission.

1. The commission shall adopt rules to implement this chapter.

2. When groundwater standards are proposed by the commission, all available information to develop the standards shall be considered, including federal regulations and all relevant information gathered from other sources. A public hearing shall be held in each congressional district prior to the submittal of a report on standards to the general assembly. This report on how groundwater standards may be a part of a groundwater protection program shall be submitted by the department to the general assembly for its consideration by January 1, 1989.

87 Acts, ch 225, §109 HF 631
NEW section

455E.10 Joint duties—local authority.

1. All state agencies shall consider groundwater protection policies in the administration of their programs. Local agencies shall consider groundwater protection policies in their programs. All agencies shall cooperate with the department in disseminating public information and education materials concerning the use and protection of groundwater, in collecting groundwater management data, and in conducting research on technologies to prevent or remedy contamination of groundwater.

2. Political subdivisions are authorized and encouraged to implement groundwater protection policies within their respective jurisdictions, provided that implementation is at least as stringent but consistent with the rules of the department.

87 Acts, ch 225, §110 HF 631
NEW section

455E.11 Groundwater protection fund established.

1. A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. The fund may be used for the purposes established for each account within the fund.

The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph "c", a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

The secretary of agriculture shall submit with the report prepared pursuant to section 17.3 a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

2. The following accounts are created within the groundwater protection fund:

a. A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in relation to sanitary disposal projects shall be deposited in the solid waste account.

The department shall use the funds in the account for the following purposes:

(1) The first fifty cents per ton of funds received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1988 and ending June 30, 1989, shall be used for the following:

(a) Six cents per ton of the amount allocated under this subparagraph is appropriated to the waste management authority within the department of natural resources.

(b) Fourteen cents per ton of the amount allocated under this subparagraph is appropriated to the University of Northern Iowa to develop and maintain the small business assistance center for the safe and economic management of solid waste and hazardous substances established at the University of Northern Iowa.

(c) Eight thousand dollars of the amount allocated under this subparagraph is appropriated to the Iowa department of public health for carrying out the departmental duties pursuant to section 135.11, subsections 20 and 21, and section 139.35.

(d) The remainder of the amount allocated under this subparagraph is appropriated to the department of natural resources for the following purposes:

(i) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301, subsection 3.

(ii) Abatement and cleanup of threats to the public health, safety, and the environment resulting from a sanitary landfill if an owner or operator of the landfill is unable to facilitate the abatement or cleanup. However, not more than ten percent of the total funds allocated under this subparagraph may be used for this purpose without legislative authorization.

(2) An additional fifty cents per ton from the fees imposed under section 455B.310 for the fiscal year beginning July 1, 1988 and ending June 30, 1989 shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(3) The additional fifty cents per ton collected from the fee imposed under section 455B.310 for the fiscal year beginning July 1, 1988 and ending June 30, 1989 may be retained by the agency making the payments to the state provided that a separate account is established for these funds and that they are used in accordance with the requirements of section 455B.306.

(4) The first fifty cents per ton of funds received from the tonnage fee imposed under section 455B.310 for the fiscal year beginning July 1, 1989 and ending June 30, 1990, shall be used for the following:

(a) Six cents per ton of the amount allocated under this subparagraph is appropriated to the waste management authority within the department of natural resources.

(b) Fourteen cents per ton of the amount allocated under this subparagraph is appropriated to the University of Northern Iowa to develop and maintain the small business assistance center for the safe and economic management of solid waste and hazardous substances established at the University of Northern Iowa.

(c) Eight thousand dollars of the amount allocated under this subparagraph is appropriated to the Iowa department of public health for carrying out the departmental duties pursuant to section 135.11, subsections 20 and 21, and section 139.35.

(d) The remainder of the amount allocated under this subparagraph is appropriated to the department of natural resources for the following purposes:

(i) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301, subsection 3.

(ii) Abatement and cleanup of threats to the public health, safety, and the environment resulting from a sanitary landfill if an owner or operator of the landfill is unable to facilitate the abatement or cleanup. However, not more than ten percent of the total funds allocated under this subparagraph may be used for this purpose without legislative authorization.

(5) One dollar per ton from the fees imposed under section 455B.310 for the fiscal year beginning July 1, 1989 and ending June 30, 1990 shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(6) The additional fifty cents per ton collected from the fee imposed under section 455B.310 for the fiscal year beginning July 1, 1989 and ending June 30, 1990 may be retained by the agency making the payments to the state provided that a separate account is established for these funds and that they are used in accordance with the requirements of section 455B.306.

(7) The first fifty cents per ton of funds received from the tonnage fee imposed for the fiscal year beginning July 1, 1990 and thereafter shall be used for the following:

(a) Fourteen cents per ton of the amount allocated under this subparagraph is appropriated to the University of Northern Iowa to develop and maintain the small business assistance center for the safe and economic management of solid waste and hazardous substances established at the University of Northern Iowa.

(b) Eight thousand dollars of the amount allocated under this subparagraph is appropriated to the Iowa department of public health for carrying out the departmental duties pursuant to section 135.11, subsections 20 and 21, and section 139.35.

(c) The administration and enforcement of a groundwater monitoring program and other required programs which are related to solid waste management.

(d) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301, subsection 3.

(e) Abatement and cleanup of threats to the public health, safety, and the environment resulting from a sanitary landfill if an owner or operator of the landfill is unable to facilitate the abatement or cleanup. However, not more than ten percent of the total funds allocated under this subparagraph may be used for this purpose without legislative authorization.

(8) One dollar per ton from the fees imposed under section 455B.310 for the fiscal year beginning July 1, 1990 and thereafter shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(9) Each additional fifty cents per ton per year of funds received from the tonnage fee for the fiscal period beginning July 1, 1990 and thereafter is allocated for the following purposes:

(a) Thirty-five cents per ton per year shall be allocated to the department of natural resources for the following purposes:

(i) Twenty-five cents per ton per year shall be used to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(ii) No more than ten cents of the thirty-five cents per year may be used for the administration of a groundwater monitoring program and other required programs which are related to solid waste management, if the amount of funds generated for administrative costs in this fiscal period is less than the amount generated for the costs in the fiscal year beginning July 1, 1988.

(b) Fifteen cents per ton per year shall be allocated to local agencies for use as provided by law.

(10) Cities, counties, and private agencies subject to fees imposed under section 455B.310 may use the funds collected in accordance with the provisions of this section and the conditions of this subsection. The funds used from the account may only be used for any of the following purposes:

(a) Development and implementation of an approved comprehensive plan.

(b) Development of a closure or postclosure plan.

(c) Development of a plan for the control and treatment of leachate which may include a facility plan or detailed plans and specifications.

(d) Preparation of a financial plan, but these funds may not be used to actually contribute to any fund created to satisfy financial requirements, or to contribute to the purchase of any instrument to meet this need.

On January 1 of the year following the first year in which the funds from the account are used, and annually thereafter, the agency shall report to the department as to the amount of the funds used, the exact nature of the use of the funds, and the projects completed. The report shall include an audit report which states that the funds were, in fact, used entirely for purposes authorized under this subsection.

(11) If moneys appropriated to the portion of the solid waste account to be used for the administration of groundwater monitoring programs and other required programs that are related to solid waste management remain unused at the end of any fiscal year, the moneys remaining shall be allocated to the portion of the account used for abatement and cleanup of threats to the public health, safety, and the environment, resulting from sanitary landfills. If the balance of the moneys in the portion of the account used for abatement and cleanup exceeds three million dollars, the moneys in excess shall be used to fund the development and implementation of demonstration projects for landfill alternatives to solid waste disposal including recycling.

b. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135.11, subsections 20 and 21, and section 139.35.

(2) Of the remaining moneys in the account:

(a) Thirty-five percent is appropriated annually for the Leopold center for sustainable agriculture at Iowa State University of science and technology.

(b) Two percent is appropriated annually to the department of natural resources for the purpose of administering grants to counties and conducting oversight of county-based programs relative to the testing of private water supply wells and the proper closure of private abandoned wells. Not more than twenty-three percent of the moneys is appropriated annually to the department of natural resources for grants to counties for the purpose of conducting programs of private, rural water supply testing, not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing, and not more than twelve percent of the moneys is appropriated annually to the department of natural resources for grants to counties for the purpose of conducting programs for properly closing abandoned, rural water supply wells.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988 for the preparation of a detailed report and plan for the establishment on July 1, 1988 of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise loca-

tion, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subsequent years. The department may allocate annually a sum not to exceed nine percent of the moneys appropriated to the center, beginning July 1, 1988.

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs, and not more than two hundred thousand dollars of the moneys is appropriated for the demonstration projects regarding agricultural drainage wells and sinkholes. Of the thirteen percent allocated for financial incentive programs, not more than fifty thousand dollars is appropriated for the fiscal year beginning July 1, 1987 and ending June 30, 1988, to the department of natural resources for grants to county conservation boards for the development and implementation of projects regarding alternative practices in the remediation of noxious weeds or other vegetation within highway rights-of-way.

c. A household hazardous waste account. The moneys collected pursuant to section 455F.7 shall be deposited in the household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 20 and 21, and section 139.35, eighty thousand dollars is appropriated to the department of natural resources for city, county, or service organization project grants relative to recycling and reclamation events, and eight thousand dollars is appropriated to the department of transportation for the period of October 1, 1987 through June 30, 1989 for the purpose of conducting the used oil collection pilot project. The remainder of the account shall be used to fund Toxic Cleanup Days programs, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials permit program by the department of revenue and finance.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account. Funds shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 20 and 21, and section 139.35.

(2) Seventy percent of the moneys deposited in the account annually are appropriated to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) For the fiscal year beginning July 1, 1987, and ending June 30, 1988, twenty-five thousand dollars is appropriated from the account to the division of insurance for payment of costs incurred in the establishment of the plan of operations program regarding the financial responsibility of owners and operators of underground storage tanks which store petroleum.

(4) The remaining funds in the account are appropriated annually to the department of natural resources for the funding of state remedial cleanup efforts.

e. An oil overcharge account. The oil overcharge moneys distributed by the United States department of energy, and approved for the energy related components of the groundwater protection strategy available through the energy conservation trust fund created in section 93.11, shall be deposited in the oil overcharge account as appropriated by the general assembly. The oil overcharge account shall be used for the following purposes:

(1) The following amounts are appropriated to the department of natural resources to implement its responsibilities pursuant to section 455E.8:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, eight hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, six hundred fifty thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, six hundred thousand dollars is appropriated.

(d) For the fiscal year beginning July 1, 1990 and ending June 30, 1991, five hundred thousand dollars is appropriated.

(e) For the fiscal year beginning July 1, 1991 and ending June 30, 1992, five hundred thousand dollars is appropriated.

(2) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, five hundred sixty thousand dollars is appropriated to the department of natural resources for assessing rural, private water supply quality.

(3) For the fiscal period beginning July 1, 1987 and ending June 30, 1989, one hundred thousand dollars is appropriated annually to the department of natural resources for the administration of a groundwater monitoring program at sanitary landfills.

(4) The following amounts are appropriated to the Iowa state water resources research institute to provide competitive grants to colleges, universities, and private institutions within the state for the development of research and education programs regarding alternative disposal methods and groundwater protection:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, one hundred twenty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, one hundred thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, one hundred thousand dollars is appropriated.

(5) The following amounts are appropriated to the department of natural resources to develop and implement demonstration projects for landfill alternatives to solid waste disposal, including recycling programs:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, seven hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, eight hundred fifty thousand dollars is appropriated.

(6) For the fiscal period beginning July 1, 1987 and ending June 30, 1988, eight hundred thousand dollars is appropriated to the Leopold center for sustainable agriculture.

(7) Seven million five hundred thousand dollars is appropriated to the agriculture energy management fund created under chapter 467E for the fiscal period beginning July 1, 1987 and ending June 30, 1992, to develop nonregulatory programs to implement integrated farm management of farm chemicals for environmental protection, energy conservation, and farm profitability; interactive public and farmer education; and applied studies on best management practices and best appropriate technology for chemical use efficiency and reduction.

(8) The following amounts are appropriated to the department of natural resources to continue the Big Spring demonstration project in Clayton county.

(a) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, seven hundred thousand dollars is appropriated annually.

(b) For the fiscal period beginning July 1, 1990 and ending June 30, 1992, five hundred thousand dollars is appropriated annually.

(9) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, one hundred thousand dollars is appropriated annually to the department of agriculture and land stewardship to implement a targeted education program on best

management practices and technologies for the mitigation of groundwater contamination from or closure of agricultural drainage wells, abandoned wells, and sinkholes.

87 Acts, ch 225, §111 HF 631

Appropriation of moneys in the groundwater fund prior to December 31, 1987; 87 Acts, ch 225, §422 HF 631

NEW section

CHAPTER 455F

HOUSEHOLD HAZARDOUS WASTE

Pilot project to dispose of used motor oil from residences and farms;

87 Acts, ch 225, §511 HF 631

455F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Commission*" means the state environmental protection commission.
2. "*Department*" means the department of natural resources.
3. "*Display area label*" means the signage used by a retailer to mark a household hazardous material display area as prescribed by the department of natural resources.
4. "*Household hazardous material*" means a product used for residential purposes and designated by rule of the department of natural resources and may include any hazardous substance as defined in section 455B.411, subsection 3; and any hazardous waste as defined in section 455B.411, subsection 4; and shall include but is not limited to the following materials: motor oils, motor oil filters, gasoline and diesel additives, degreasers, waxes, polishes, solvents, paints, with the exception of latex-based paints, lacquers, thinners, caustic household cleaners, spot and stain remover with petroleum base, and petroleum-based fertilizers. However, "*household hazardous material*" does not include laundry detergents or soaps, dishwashing compounds, chlorine bleach, personal care products, personal care soaps, cosmetics, and medications.
5. "*Manufacturer*" means a person who manufactures or produces a household hazardous material for resale in this state.
6. "*Residential*" means a permanent place of abode, which is a person's home as opposed to a person's place of business.
7. "*Retailer*" means a person offering for sale or selling a household hazardous material to the ultimate consumer, within the state.
8. "*Wholesaler*" or "*distributor*" means a person other than a manufacturer or manufacturer's agent who engages in the business of selling or distributing a household hazardous material within the state, for the purpose of resale.

87 Acts, ch 225, §501 HF 631

NEW section

455F.2 Policy statement.

It is the policy of this state to educate Iowans regarding the hazardous nature of certain household products, proper use of the products, and the proper methods of disposal of residual product and containers in order to protect the public health, safety, and the environment.

87 Acts, ch 225, §502 HF 631

NEW section

455F.3 Labels required.

1. A retailer shall affix a display area label, as prescribed by rule of the commission, in a prominent location upon or near the display area of a household hazardous material. If the display area is a shelf, and the price of the product is affixed to the shelf, the label shall be affixed adjacent to the price information.
2. The department shall develop, in cooperation with distributors, wholesalers, and retailer associations, and shall distribute to retailers a household hazardous

products list to be utilized in the labeling of a display area containing products which are household hazardous materials.

3. A person found in violation of this section is guilty of a simple misdemeanor.

87 Acts, ch 225, §503 HF 631
NEW section

455F.4 Consumer information booklets.

A retailer shall maintain and prominently display a booklet, developed by the department, in cooperation with manufacturers, distributors, wholesalers, and retailer associations and provided to retailers at departmental expense, which provides information regarding the proper use of household hazardous materials and specific instructions for the proper disposal of certain substance categories. The department shall also develop and provide to a retailer, at departmental expense, bulletins regarding household hazardous materials which provide information designated by rule of the commission. The retailer shall distribute the bulletins without charge to customers.

A manufacturer or distributor of household hazardous materials who authorizes independent contractor retailers to sell the products of the manufacturer or distributor on a person-to-person basis primarily in the customer's home, shall print informational lists of its products which are designated by the department as household hazardous materials. These lists of products and the consumer information booklets prepared in accordance with this section shall be provided by the manufacturer or distributor in sufficient quantities to each contractor retailer for dissemination to customers. During the course of a sale of a household hazardous material by a contractor retailer, the customer shall in the first instance be provided with a copy of both the list and the consumer information booklet. In subsequent sales to the same customer, the list and booklet shall be noted as being available if desired.

87 Acts, ch 225, §504 HF 631
NEW section

455F.5 Duties of the commission.

The commission shall:

1. Adopt rules which establish a uniform label to be supplied and used by retailers.
2. Adopt rules which designate the type and amount of information to be included in the consumer information booklets and bulletins.

87 Acts, ch 225, §505 HF 631
NEW section

455F.6 Duties of the department.

The department shall:

1. Designate products which are household hazardous materials and, based upon the designations and in consultation with manufacturers, distributors, wholesalers, and retailer associations, develop a household hazardous product list for the use of retailers in identifying the products.
2. Enforce the provisions of this chapter and implement the penalties established.
3. Identify, after consulting with departmental staff and the listing of other states, no more than fifty commonly used household products which, due to level of toxicity, extent of use, nondegradability, or other relevant characteristic, constitute the greatest danger of contamination of the groundwater when placed in a landfill. The department may identify additional products by rule.
4. Submit recommendations to the general assembly regarding the products specified in subsection 1 which include but are not limited to the following:
 - a. Education of consumers regarding the danger incurred in disposal of the products, the proper disposal of the products, and the use of alternative products which do not present as great a disposal danger as the products specified.

- b. Dissemination of information regarding the products specified.
- c. Special labeling or stamping of the products.
- d. A means for proper disposal of the products.
- e. Proposed legislative action regarding implementation of recommendations concerning the products.

87 Acts, ch 225, §506 HF 631
NEW section

455F.7 Household hazardous materials permit.

1. A retailer offering for sale or selling a household hazardous material shall have a valid permit for each place of business owned or operated by the retailer for this activity. All permits provided for in this division shall expire on June 30 of each year. Every retailer shall submit an annual application by July 1 of each year and a fee of ten dollars based upon gross retail sales of up to fifty thousand dollars, twenty-five dollars based upon gross retail sales of fifty thousand dollars to three million dollars, and one hundred dollars based upon gross retail sales of three million dollars or more to the department of revenue and finance for a permit upon a form prescribed by the director of revenue and finance. Permits are nonrefundable, are based upon an annual operating period, and are not prorated. A person in violation of this section shall be subject to permit revocation upon notice and hearing. The department shall remit the fees collected to the household hazardous waste account of the groundwater protection fund. A person distributing general use pesticides labeled for agricultural or lawn and garden use with gross annual pesticide sales of less than ten thousand dollars is subject to the requirements and fee payment prescribed by this section.

2. A manufacturer or distributor of household hazardous materials, which authorizes retailers as independent contractors to sell the products of the manufacturer or distributor on a person-to-person basis primarily in the customer's home, may obtain a single household hazardous materials permit on behalf of its authorized retailers in the state, in lieu of individual permits for each retailer, and pay a fee based upon the manufacturer's or distributor's gross retail sales in the state according to the fee schedule and requirements of subsection 1. However, a manufacturer or distributor which has gross retail sales of three million dollars or more in the state shall pay an additional permit fee of one hundred dollars for each subsequent increment of three million dollars of gross retail sales in the state, up to a maximum permit fee of three thousand dollars.

87 Acts, ch 225, §507 HF 631
NEW section

455F.8 Household hazardous waste cleanup program created.

The department shall conduct programs to collect and dispose of small amounts of hazardous wastes which are being stored in residences or on farms. The program shall be known as "*Toxic Cleanup Days*". The department shall promote and conduct the program and shall by contract with a qualified and bonded waste handling company, collect and properly dispose of wastes believed by the person disposing of the waste to be hazardous. The department shall establish maximum amounts of hazardous wastes to be accepted from a person during the "*Toxic Cleanup Days*" program. Amounts accepted from a person above the maximum shall be limited by the department and may be subject to a fee set by the department, but the department shall not assess a fee for amounts accepted below the maximum amount. The department shall designate the times and dates for the collection of wastes. The department shall have as a goal twelve "*Toxic Cleanup Days*" during the period beginning July 1, 1987, and ending October 31, 1988. In any event, the department shall offer the number of days that can be properly and reasonably conducted with funds deposited in the household hazardous waste account. In order to achieve the maximum benefit from the program, the department shall offer "*Toxic Cleanup Days*" on a statewide basis

and provide at least one "Toxic Cleanup Day" in each departmental region. "Toxic Cleanup Days" shall be offered in both rural and urban areas to provide a comparison of response levels and to test the viability of multicounty "Toxic Cleanup Days". The department may also offer at least one "Toxic Cleanup Day" at a previously serviced location to test the level of residual demand for the event and the effect of the existing public awareness on the program. The department shall prepare an annual report citing the results and costs of the program for submittal to the general assembly.

87 Acts, ch 225, §508 HF 631
NEW section

455F.9 Education program.

In addition to the "Toxic Cleanup Days" program the department shall implement a public information and education program regarding the use and disposal of household hazardous materials. The program shall provide appropriate information concerning the reduction in use of the materials, including the purchase of smaller quantities and selection of alternative products. The department shall cooperate with existing educational institutions, distributors, wholesalers, and retailers, and other agencies of government and shall enlist the support of service organizations, whenever possible, in promoting and conducting the programs in order to effectuate the household hazardous materials policy of the state.

87 Acts, ch 225, §509 HF 631
NEW section

455F.10 Penalty.

Any person violating a provision of this chapter or a rule adopted pursuant to this chapter is guilty of a simple misdemeanor.

87 Acts, ch 225, §510 HF 631
NEW section

455F.11 Recycling and reclamation programs.

Up to eighty thousand dollars of the moneys deposited in the household hazardous waste account shall be allocated to the department of natural resources for city, county, or service organization projects relative to recycling and reclamation events. A city, county, or service organization shall submit a competitive grant to the department of natural resources by April 1 for approval by the department no later than May 15.

87 Acts, ch 225, §512 HF 631
NEW section

CHAPTER 465

INDIVIDUAL DRAINAGE RIGHTS

465.22 Drainage in course of natural drainage— reconstruction—damages.

Owners of land may drain the land in the general course of natural drainage by constructing or reconstructing open or covered drains, discharging the drains in any natural watercourse or depression so the water will be carried into some other natural watercourse, and if the drainage is wholly upon the owner's land the owner is not liable in damages for the drainage unless it increases the quantity of water or changes the manner of discharge on the land of another. An owner in constructing a replacement drain, wholly on the owner's land, and in the exercise of due care, is not liable in damages to another if a previously constructed drain on the owner's own land is rendered inoperative or less efficient by the new drain,

unless in violation of the terms of a written contract. This section does not affect the rights or liabilities of proprietors in respect to running streams.

87 Acts, ch 225, §306 HF 631
Section amended

CHAPTER 467A

SOIL AND WATER CONSERVATION

467A.3 Definitions.

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "*District*" or "*soil and water conservation district*" means a governmental subdivision of this state, and a public body corporate and politic, organized for the purposes, with the powers, and subject to the restrictions in this chapter set forth.

2. "*Commissioner*" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

3. "*Department*" means the department of agriculture and land stewardship.

4. "*Division*" means the division of soil conservation created within the department.

5. "*Committee*" or "*state soil conservation committee*" means the committee established by section 467A.4.

6. "*Petition*" means a petition filed under the provisions of subsection 1 of section 467A.5 for the creation of a district.

7. "*Nominating petition*" means a petition filed under the provisions of section 467A.5 to nominate candidates for the office of commissioner of a soil conservation district.

8. "*State*" means the state of Iowa.

9. "*Agency of this state*" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

10. "*United States*" or "*agencies of the United States*" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States.

11. "*Government*" or "*governmental*" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

12. "*Landowner*" includes any person, firm, or corporation or any federal agency, this state or any of its political subdivisions, who shall hold title to land lying within a proposed district or a district organized under the provisions of this chapter.

13. "*Due notice*" means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

14. "*Water resource district*" means one of the six water resource districts established by section 467D.3.

15. "Board" means the body designated by section 467D.4 to administer each of the water resource districts.

87 Acts, ch 23, §16 SF 382
Subsection 1 amended

467A.4 Soil conservation division—committee.

1. The soil conservation division is established within the department to perform the functions conferred upon it in chapters 83, 83A, and 467A through 467D. The division shall be administered in accordance with the policies of the state soil conservation committee, which shall advise the division and which shall approve administrative rules proposed by the division for the administration of chapters 83, 83A, and 467A through 467D before the rules are adopted pursuant to chapter 17A. The state soil conservation committee consists of a chairperson and ten other members. The following shall serve as ex officio nonvoting members of the committee: The director of the Iowa cooperative extension service in agriculture and home economics, or the director's designee, and the director of the department of natural resources or the director's designee. Nine voting members shall be appointed by the governor subject to confirmation by the senate. Six of the appointive members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of the six water resource districts established by section 467D.3, and no more than one of whom shall be a resident of any one county. The seventh, eighth, and ninth appointive members shall be chosen by the governor from the state at large with one appointed to be a representative of cities, one appointed to be a representative of the mining industry, and one appointee who is a farmer actively engaged in tree farming operations. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the other members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons have no vote and shall serve in an advisory capacity only.

2. The committee or division may call upon the attorney general of the state for necessary legal services. The committee may delegate to its chairperson, to one or more of its members, or to one or more agents or employees, powers and duties as it deems proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail the request to the staff or personnel of the agency or institution of learning, and make the special reports, surveys, or studies as the committee requests.

3. The committee shall designate its chairperson, and may change the designation. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire as provided by section 69.19. Appointments may be made at other times and for other periods as necessary to fill vacancies on the committee. Members shall not be appointed to serve more than two complete six-year terms. Members designated to represent the director of the department of natural resources and the director of the Iowa cooperative extension service in agriculture and home economics shall serve at the pleasure of the officer making the designation. A majority of the voting members of the committee constitutes a quorum, and the concurrence of a majority of the voting members of the committee in any matter within their duties is required for its determination. Members are entitled to actual expenses necessarily incurred in the discharge of their duties as members of the committee. The expenses paid to the committee members shall be paid from funds appropriated to the department. Each member of the committee may also be eligible to receive compensation as provided in section 7E.6. The committee shall provide for the execution of surety bonds for all

employees and officers who are entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to other duties and powers conferred upon the division of soil conservation, the division has the following duties and powers:

a. To offer assistance as appropriate to the commissioners of soil and water conservation districts in carrying out any of their powers and programs.

b. To keep the commissioners of each of the several districts informed of the activities and experience of all other districts and to facilitate an interchange of advice and experience between such districts and co-operation between them.

c. To co-ordinate the programs of the soil and water conservation districts so far as this may be done by advice and consultation.

d. To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil and water conservation districts.

f. To render financial aid and assistance to soil conservation districts for the purpose of carrying out the policy stated in this chapter.

g. To offer such assistance as may be appropriate to the water resource districts established by section 467D.3, and in the carrying out of any of their powers and programs.

h. Review, amend, and give final approval to the plan of each of the water resource districts, and to any subsequent changes therein, in the manner provided by chapter 467D.

i. Maintain files of such proceedings, rules, and orders, of each of the water resource districts in the state as the department may request from the water resource districts pursuant to section 467D.6, subsection 11.

j. To keep the boards of each of the six water resource districts established by section 467D.3 informed of the activities and experience of the other water resource districts and to facilitate an interchange of advice and experience between water resource districts and co-operation between them.

k. To co-ordinate the programs of the water resource districts so far as this may be done by advice and consultation.

l. To disseminate information throughout the state concerning the activities and programs of the water resource districts established by section 467D.3.

m. To render financial aid and assistance to the six water resource districts established by section 467D.3 for the purpose of carrying out the policy stated in chapter 467D.

n. To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience of all other such districts and facilitate an interchange of advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts and provide other appropriate assistance to the districts.

87 Acts, ch 23, §17 SF 382

Subsection 4, paragraphs a, c and e amended

DIVISION II

SOIL AND WATER CONSERVATION DISTRICTS

467A.5 Soil and water conservation districts.

1. The one hundred soil and water conservation districts* established in the manner which was prescribed by law prior to July 1, 1975 shall continue in

existence with the boundaries and the names* in effect on July 1, 1975. If the existence of a district so established is discontinued pursuant to section 467A.10, a petition for re-establishment of the district or for annexation of the former district's territory to any other abutting district may be submitted to, and shall be acted upon by, the state soil conservation committee in substantially the manner provided by section 467A.5, Code 1975.

2. The governing body of each district shall consist of five commissioners elected on a nonpartisan basis for staggered six-year terms commencing on the first day of January that is not a Sunday or holiday following their election. Any eligible elector residing in the district is eligible to the office of commissioner, except that no more than one commissioner shall at any one time be a resident of any one township. A vacancy is created in the office of any commissioner who changes residence into a township where another commissioner then resides. A vacancy in the office of commissioner shall be filled by appointment of the state soil conservation committee until the next succeeding general election, at which time the balance of the unexpired term shall be filled as provided by section 69.12.

3. At each general election a successor shall be chosen for each commissioner whose term will expire in the succeeding January. Nomination of candidates for the office of commissioner shall be made by petition in accordance with chapter 45, except that each candidate's nominating petition shall be signed by at least twenty-five eligible electors of the district. The petition form shall be furnished by the county commissioner of elections. Every candidate shall file with the nomination papers an affidavit stating the candidate's name, the candidate's residence, that the person is a candidate and is eligible for the office of commissioner, and that if elected the candidate will qualify for the office. An eligible elector shall not in any one year sign the nominating petitions of a number of candidates greater than the number of commissioners to be elected in that year. The signed petitions shall be filed with the county commissioner of elections not later than five o'clock p.m. on the fifty-fifth day prior to the general election. The votes for the office of district commissioner shall be canvassed in the same manner as the votes for county officers, and the returns shall be certified to the commissioners of the district. A plurality shall be sufficient to elect commissioners, and no primary election for the office shall be held. If the canvass shows that the two candidates receiving the highest and the second highest number of votes for the office of district commissioner are both residents of the same township, the board shall certify as elected the candidate who received the highest number of votes for the office and the candidate receiving the next highest number of votes for the office who is not a resident of the same township as the candidate receiving the highest number of votes.

87 Acts, ch 23, §18 SF 382

*Established as "soil conservation districts"

Subsection 1 amended

467A.6 Appointment, qualifications and tenure of commissioners.

The commissioners of each soil and water conservation district shall convene on the first day of January that is not a Sunday or holiday in each odd-numbered year. Those commissioners whose term of office begins on that day shall take the oath of office prescribed by section 63.10. The commissioners shall then organize by election of a chairperson and a vice chairperson.

The commissioners of the respective districts shall submit to the department such statements, estimates, budgets, and other information at such times and in such manner as the department may require.

A commissioner shall receive no compensation for the commissioner's services but the commissioner may be paid expenses, including traveling expenses, necessarily incurred in the discharge of the commissioner's duties, if funds are available for that purpose.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairperson, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the division of soil conservation, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for a biennial audit of the accounts of receipts and disbursements.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

87 Acts, ch 23, §19 SF 382
Unnumbered paragraph 1 amended

467A.7 Powers of districts and commissioners.

A soil and water conservation district organized under this chapter has the following powers, in addition to others granted in other sections of this chapter:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in co-operation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 467A.2, on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

4. To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

8. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

14. Subject to the approval of the state soil conservation committee, to change the name of the soil and water conservation district.

15. To take notice of the water resource district plan, and conform to the duly promulgated rules of the water resource district or water resource districts in which the soil and water conservation district is located. However, this subsection does not grant authority not otherwise granted by law to the commissioners of soil and water conservation districts.

16. The commissioners shall, as a condition for the receipt of any state cost-sharing funds for permanent soil conservation practices, require the owner of the land on which the practices are to be established to covenant and file, in the office of the soil and water conservation district of the county in which the land is located, an agreement identifying the particular lands upon which the practices for which state cost-sharing funds are to be received will be established, and providing that the project will not be removed, altered, or modified so as to lessen its effectiveness without the consent of the commissioners, obtained in advance and based on guidelines drawn up by the state soil conservation committee, for a period of twenty years after the date of receiving payment. The commissioners shall assist the division in the enforcement of this subsection. The agreement does not create a lien on the land, but is a charge personally against the owner of the land at the time of removal, alteration, or modification if an administrative order is made under section 467A.61, subsection 3.

17. To enter into special funding agreements which, notwithstanding subsection 4, provide for cost sharing up to sixty percent of the cost of a project including five or more contiguous farm units which have at least five hundred or more acres of farmland and which constitute at least seventy-five percent of the agricultural land lying within a watershed or subwatershed, where the owners jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plans.

18. To encourage local school districts to provide instruction in the importance of and in some of the basic methods of soil conservation, as a part of the course work relating to conservation of natural resources and environmental awareness required pursuant to section 256.11, subsections 3 and 4, and to offer technical assistance to schools in developing such instructional programs.

19. To make incentive payments to encourage summer construction of permanent soil and water conservation practices, provided that the commissioners of a soil conservation district shall not use state cost-sharing funds to pay such incentives in any fiscal year when requests which seek cost sharing for eligible permanent soil and water conservation practices, but which do not seek incentive payments under this subsection, are sufficient to use all of the state cost-sharing funds made available to the district for that year. Incentive payments made under this subsection may, notwithstanding subsection 4, provide for cost sharing up to sixty percent of the cost of establishing any permanent soil and water conservation practice where the establishment of that practice involves a construction project which begins after June 1 but before August 15 of any calendar year. Incentive payments under this subsection may also include, or may be limited to a pro rata amount, in accordance with rules of the department, to compensate for production loss on the area disturbed for construction of practices.

87 Acts, ch 23, §20 SF 382

Unnumbered paragraph 1, and subsections 14, 15, and 16 amended

467A.10 Discontinuance of districts.

At any time after five years after the organization of a district under this chapter, any twenty-five owners of land lying within the boundaries of the district, but in no case less than twenty percent of the owners of land lying within the district, may file a petition with the division asking that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct public meetings and public hearings upon the petition as

necessary to assist in the consideration of the petition. Within sixty days after a petition has been received by the division, the division shall give due notice of the holding of a referendum, shall supervise the referendum, and shall issue appropriate rules governing the conduct of the referendum, the question to be submitted by ballots upon which the words "*For terminating the existence of the (name of the soil and water conservation district to be here inserted)*" and "*Against terminating the existence of the (name of the soil and water conservation district to be here inserted)*" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the voter favors or opposes discontinuance of the district. All owners of lands lying within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relating to the referendum invalidate the referendum or the result of the referendum if notice was given substantially as provided in this section and if the referendum was fairly conducted.

When sixty-five percent of the landowners vote to terminate the existence of the district, the division shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of the sale to be deposited into the state treasury. The commissioners shall then file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with the application the certificate of the division setting forth the determination of the division that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as provided in this section, and shall set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

Upon issuance of a certificate of dissolution under this section, all ordinances and regulations previously adopted and in force within the districts are of no further force and effect. All contracts previously entered into, to which the district or commissioners are parties, remain in force and effect for the period provided in the contracts. The division is substituted for the district or commissioners as party to the contracts. The division is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued, and to modify or terminate the contracts by mutual consent or otherwise, as the commissioners of the district would have had.

The division shall not entertain petitions for the discontinuance of any district nor conduct referenda upon discontinuance petitions nor make determinations pursuant to the petitions in accordance with this chapter, more often than once in five years.

87 Acts, ch 23, §21 SF 382
Unnumbered paragraph 1 amended

467A.13 Purpose of subdistricts.

Subdistricts of a soil and water conservation district may be formed as provided in this chapter for the purposes of co-operating with water resource districts and of carrying out watershed protection and flood prevention programs within the subdistrict but shall not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district.

87 Acts, ch 23, §22 SF 382
Section amended

467A.14 Petition to form.

When the landowners in a proposed subdistrict desire that a subdistrict be organized, they shall file a petition with the commissioners of the soil and water

conservation district. The area must be contiguous and in the same watershed but it shall not include any area located within the boundaries of an incorporated city. The petition shall set forth an intelligible description by congressional subdivision, or otherwise, of the land suggested for inclusion in the subdistrict and shall state whether the special annual tax or special benefit assessments will be used, or whether the use of both is contemplated. The petition shall contain a brief statement giving the reasons for organization, and requesting that the proposed area be organized as a subdistrict, and must be signed by sixty-five percent of the landowners in the proposed subdistrict. Land already in one subdistrict cannot be included in another. The soil and water conservation district commissioners shall review the petition and if it is found adequate shall arrange for a hearing on it.

87 Acts, ch 23, §23 SF 382
Section amended

467A.15 Notice and hearing.

Within thirty days after a petition has been filed with the soil and water district commissioners, they shall fix a date, hour, and place for a hearing and direct the secretary to cause notice to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lienholder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and purpose of the petition and that all objections to establishment of the subdistrict for any reason must be made in writing and filed with the secretary of the soil and water conservation district at, or before, the time set for hearing. The soil and water conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties may attend the hearing and be heard. The soil and water district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil and water district commissioners determine that the petition meets the requirements set forth in this section and in section 467A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official minutes together with an appropriate official name or designation for the subdistrict.

87 Acts, ch 23, §24 SF 382
Section amended

467A.16 Publication of notice.

The notice of hearing on the formation of a subdistrict shall be by publication once each week for two consecutive weeks in some newspaper of general circulation published in the county or district, the last of which shall be not less than ten days prior to the day set for the hearing on the petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the secretary of the district at the time the hearing begins.

87 Acts, ch 115, §61 SF 374
Section amended

467A.17 Subdistrict in more than one district.

If the proposed subdistrict lies in more than one soil and water conservation district, the petition may be presented to the commissioners of any one of such districts, and the commissioners of all such districts shall act jointly as a board of commissioners with respect to all matters concerning the subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate its chairperson, vice chairperson, and secretary-treasurer to serve for

terms of one year. Such a subdistrict shall be formed in the same manner and has the same powers and duties as a subdistrict formed in one soil and water conservation district.

87 Acts, ch 23, §25 SF 382
Section amended

467A.18 Authentication.

Following the entry in the official minutes of the soil and water district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the division of soil conservation.

87 Acts, ch 23, §26 SF 382
Section amended

467A.19 Governing body.

The commissioners of a soil and water conservation district in which the subdistrict is formed are the governing body of the subdistrict. When a subdistrict lies in more than one soil and water conservation district, the combined board of commissioners is the governing body. The governing body of the subdistrict shall appoint three trustees living within the subdistrict to assist with the administration of the subdistrict.

87 Acts, ch 23, §27 SF 382
Section amended

467A.21 Condemnation by subdistrict.

A subdistrict of a soil and water conservation district may condemn land or rights or interests in the subdistrict to carry out the authorized purposes of the subdistrict.

87 Acts, ch 23, §28 SF 382
Section amended

467A.22 General powers applicable—warrants or bonds.

A subdistrict organized under this chapter has all of the powers of a soil and water conservation district in addition to other powers granted to the subdistrict in other sections of this chapter.

The governing body of the subdistrict, upon determination that benefits from works of improvement as set forth in the watershed work plan to be installed will exceed costs thereof, and that funds needed for purposes of the subdistrict require levy of a special benefit assessment as provided in section 467A.23, in lieu of the special annual tax as provided in section 467A.20, shall record its decision to use its taxing authority and, upon majority vote of the governing body and with the approval of the state soil conservation committee, may issue warrants or bonds payable in not more than forty semiannual installments in connection with the special benefit assessment, and pledge and assign the proceeds of the special benefit assessment and other revenues of the subdistrict as security for the warrants or bonds. The warrants and bonds of indebtedness are general obligations of the subdistrict, exempt from all taxes, state and local, and are not indebtedness of the soil and water conservation district or the state of Iowa.

87 Acts, ch 23, §29 SF 382
Section amended

467A.42 Soil and water conservation practices.

In addition to the definitions established by section 467A.3, as used in sections 467A.43 to 467A.53 and sections 467A.61 to 467A.66, unless the context otherwise requires:

1. "Soil loss limit" means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commis-

sioners of the respective soil and water conservation districts determine is acceptable in order to meet the objectives expressed in section 467D.1.

2. "*Soil and water conservation practices*" means any of the practices designated in or pursuant to this subsection which serve to prevent erosion of soil by wind or water, in excess of applicable soil loss limits, from land used for agricultural or horticultural purposes only.

a. "*Permanent soil and water conservation practices*" means planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, and the construction of terraces, or other permanent soil and water practices approved by the division.

b. "*Temporary soil and water conservation practices*" means planting of annual or biennial crops, use of strip-cropping, contour planting, or minimum or mulch tillage, and any other cultural practices approved by the division.

3. "*Erosion control practices*" means:

a. The construction or installation, and maintenance, of such structures or devices as are necessary to carry to a suitable outlet from the site of any building housing four or more residential units, any commercial or industrial development or any publicly or privately owned recreational or service facility of any kind, not served by a central storm sewer system, any water which:

(1) Would otherwise cause erosion in excess of the applicable soil loss limit; and

(2) Does not carry nor constitute sewage, industrial waste, or other waste as defined by section 455B.171.

b. The employment of temporary devices or structures, temporary seeding, fibre mats, plastic, straw, or other measures adequate to prevent erosion in excess of the applicable soil loss limits from the site of, or land directly affected by, the construction of any public or private street, road or highway, any residential, commercial, or industrial building or development, or any publicly or privately owned recreational or service facility of any kind, at all times prior to completion of such construction.

c. The establishment and maintenance of vegetation upon the right of way of any completed portion of any public street, road, or highway, or the construction or installation thereon of structures or devices, or other measures adequate to prevent erosion from the right of way in excess of the applicable soil loss limits.

4. "*Agricultural land*" has the meaning assigned that term by section 172C.1.

5. "*Farm unit*" means a single contiguous tract of agricultural land, or two or more adjacent tracts of agricultural land, located within a single soil and water conservation district, upon which farming operations are being conducted by a person who owns or is purchasing or renting all of the land, or by that person's tenant or tenants. If a landowner has multiple farm tenants, the land on which farming operations are being conducted by each tenant is a separate farm unit. This definition does not prohibit land which is within a single soil and water conservation district and is owned or being purchased by the same person, or is being rented by the same tenant, from being treated as two or more farm units if the commissioners of the soil and water conservation district deem it preferable to do so.

6. "*Conservation folder*" means compiled information concerning the topography, soil composition, natural or artificial drainage characteristics and other pertinent factors concerning a particular farm unit, which are necessary to the preparation of a sound and equitable conservation agreement for that farm unit. The specific items to be contained in a conservation folder shall be prescribed by administrative rules of the department of soil conservation. The department shall provide by rule that an updated farm plan prepared for a particular farm unit within ten years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit.

7. "*Farm unit soil conservation plan*" means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the commissioners of

the soil and water conservation district within which that farm unit is located, based on the conservation folder for that farm unit and identifying those permanent soil and water conservation practices and temporary soil and water conservation practices the use of which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil loss limit or limits. The plan shall if practicable identify alternative practices by which this objective may be attained.

8. "Conservation agreement" means a commitment by the owner or operator of a farm unit to implement a farm unit soil conservation plan or, with the approval of the commissioners of the soil and water conservation district within which the farm unit is located, a portion of a farm unit soil conservation plan. The commitment shall be conditioned on the furnishing by the soil and water conservation district of technical or planning assistance in the establishment of, and cost sharing or other financial assistance for establishment and maintenance of the soil and water conservation practices necessary to implement the plan, or a portion of the plan.

87 Acts, ch 23, §30 SF 382
Subsections 1, 5, 7 and 8 amended

467A.44 Rules by commissioners—scope.

The commissioners of each soil and water conservation district shall, with approval of and within time limits set by administrative order of the division, adopt reasonable regulations as are deemed necessary to establish a soil loss limit or limits for the district and provide for the implementation of the limit or limits, and may subsequently amend or repeal their regulations as they deem necessary. The division shall review the soil loss limit regulations adopted by the soil and water conservation districts at least once every five years, and shall recommend changes in the regulations of a soil and water conservation district which the division deems necessary to assure that the district's soil loss limits are reasonable and attainable. The commissioners may:

1. Classify land in the district on the basis of topography, soil characteristics, current use, and other factors affecting propensity to soil erosion.

2. Establish different soil loss limits for different classes of land in the district if in their judgment and that of the state soil conservation committee a lower soil loss limit should be applied to some land than can reasonably be applied to other land in the district, it being the intent of the general assembly that no land in the state be assigned a soil loss limit that cannot reasonably be applied to such land.

3. Require the owners of real property in the district to employ either soil and water conservation practices or erosion control practices, and:

a. May not specify the particular practices to be employed so long as such owners voluntarily comply with the applicable soil loss limits established for the district.

b. May specify two or more approved soil and water conservation practices or erosion control practices, one of which shall be employed by the landowner to bring erosion from land under the landowner's control within the applicable soil loss limit of the district when an administrative order is issued to the landowner.

c. In no case may the commissioners require:

(1) The employment of erosion control practices as defined in section 467A.42, subsection 3, on land used in good faith for agricultural or horticultural purposes only.

(2) The employment of soil and water conservation practices or erosion control practices on that portion of any public street, road or highway completed or under construction within the corporate limits of any city, which is or will become the traveled or surfaced portion of such street, road, or highway.

(3) That any owner or operator of agricultural land refrain from fall plowing of land on which the owner or operator intends to raise a crop during the next succeeding growing season, however on those lands which are prone to excessive

wind erosion the commissioners may require that reasonable temporary measures be taken to minimize the likelihood of wind erosion so long as such measures do not unduly increase the cost of operation of the farm on which the land is located. However, fall plowing of soil which is commonly known as gumbo shall always be permitted.

d. May require that a person under an order to employ soil and water conservation practices or erosion control practices submit up to three bids to the commissioners for the work and provide an explanation to the commissioners if a bid other than the lowest bid has been selected by that person.

87 Acts, ch 23, §31 SF 382
Unnumbered paragraph 1 amended

467A.45 Submission of regulations to division—hearing.

Regulations which the commissioners propose to adopt, amend, or repeal shall be submitted to the division, in a form prescribed by the division, for its approval. The division may approve the regulations as submitted, or with amendments as it deems necessary. The commissioners shall, after approval, publish notice of hearing on the proposed regulations, as approved, in a newspaper of general circulation in the district, setting a date and time not less than ten nor more than thirty days after the publication when a hearing on the proposed regulations will be held at a specified place. The notice shall include the full text of the proposed regulations or shall state that the proposed regulations are on file and available for review at the office of the affected soil and water conservation district.

87 Acts, ch 23, §32 SF 382
Section amended

467A.47 Inspection of land on complaint.

The commissioners of a soil and water conservation district shall inspect or cause to be inspected any land within the district, upon receipt of a written and signed complaint, from an owner or occupant of land being damaged by sediment, that soil erosion is occurring on the land in excess of the limits established by the district's soil erosion control regulations. If they find that sediment damages are occurring to property owned or occupied by the person filing the complaint and that excess soil erosion is occurring on the land inspected, they shall issue an administrative order to the landowner or landowners of record, and to the occupant of the land if known to the commissioners, describing the land and stating as nearly as possible the extent to which soil erosion on the land exceeds the limits established by the district's regulations. The order shall be delivered either by personal service or by restricted certified mail to each of the persons to whom it is directed, and shall:

1. In the case of erosion occurring on the site of any construction project or similar undertaking involving the removal of all or a major portion of the vegetation or other cover, exposing bare soil directly to water or wind, state a time not more than five days after service or mailing of the notice of the order when work necessary to establish or maintain erosion control practices must be commenced, and a time not more than thirty days after service or mailing of the notice of the order when the work is to be satisfactorily completed.

2. In all other cases, state a time not more than six months after service or mailing of the notice of the order, by which work needed to establish or maintain the necessary soil and water conservation practices or erosion control measures must be commenced, and a time not more than one year after the service or mailing of the notice of the order when the work is to be satisfactorily completed, unless the requirements of the order are superseded by the provisions of section 467A.48.

87 Acts, ch 23, §33 SF 382
Unnumbered paragraph 1 amended

467A.48 Application for public cost-sharing funds.

1. An owner or occupant of land in this state is not required to establish any new permanent or temporary soil and water conservation practice unless public or

other cost-sharing funds have been specifically approved for that land and actually made available to the owner or occupant. The amount of cost-sharing funds made available shall not exceed seventy-five percent of the estimated cost as established by the commissioners of a permanent soil and water conservation practice, or seventy-five percent of the actual cost, whichever is less, or an amount set by the division for a temporary soil and water conservation practice, except as otherwise provided by law with respect to land classified as agricultural land under conservation cover. The commissioners shall establish the estimated cost of permanent soil and water conservation practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each calendar year.

2. The division shall review these requirements once each year, and may authorize soil and water conservation district commissioners to make the mandatory establishment of any specified soil and water conservation practice in any particular case conditional on a higher proportion of public cost-sharing than is required by this section. When the commissioners have been so authorized, they shall, in determining the amount of cost-sharing for establishment of a specified soil and water conservation practice to comply with an administrative order issued pursuant to section 467A.47, consider the extent to which the practice will contribute benefits to the public in relation to the benefits that will accrue to the individual owner or occupant of the land on which the practice is to be established. Evidence that an application for public or other cost-sharing funds, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to section 467A.47, has been submitted to the proper officer or agency constitutes commencement of the work within the meaning of sections 467A.43 through 467A.53.

3. Upon receiving evidence of the submission of an application, the commissioners shall forward to the officer or agency to which the application was made a written request to receive notification of the disposition of the application. When notified of the approval of the application, the commissioners shall issue to the same parties who received the original administrative order, or their successors in interest, a supplementary order, to be delivered in the same manner as provided by sections 467A.43 to 467A.53 for delivery of original administrative orders. The supplementary order shall state a time, not more than six months after approval of the application for public cost-sharing funds, by which the work needed to comply with the original administrative order shall actually be commenced, and a time thereafter when the work is to be satisfactorily completed. If feasible, that time shall be within one year after the date of the supplementary order, but the owner of land on which a soil and water conservation practice is being established under this section is not required to incur a cost for the practice in any one calendar year which exceeds ten dollars per acre for each acre of land belonging to that owner and located in the county containing the land on which the required practice is being established or in counties contiguous to that county.

87 Acts, ch 23, §34 SF 382
Subsection 2 amended

467A.53 Co-operation with other agencies.

Soil and water conservation districts may enter into agreements with the federal government or any agency of the federal government, as provided by state law, or with the state of Iowa or any agency of the state, any other soil and water conservation district or water resource district, or other political subdivision of this state, for co-operation in preventing, controlling, or attempting to prevent or control, soil erosion. Soil and water conservation districts may accept, as provided by state law, any money disbursed for soil erosion control purposes by the federal

government or any agency of the federal government, and expend the money for the purposes for which it was received.

87 Acts, ch 23, §35 SF 382
Section amended

467A.54 State agency conservation plans—exemptions.

Each state agency shall enter into an agreement with the soil and water conservation district in which the state agency has public land under its control in cultivation. The agreement shall contain a plan of the state agency to prevent soil erosion in excess of soil loss limits by the use of soil and water conservation practices and erosion control practices. This section applies to all public land which is used for horticultural or agricultural purposes. State soil conservation cost-sharing funds shall not be used on these public lands. Conservation plans required by this section shall be completed by July 1, 1986, and implementation shall occur consistent with the schedule contained in the conservation plan. Application for exemption from this section may be submitted to the appropriate soil and water conservation district. The exemption shall be granted for land upon which soil management research for the purposes of the study, evaluation, understanding and control of erosion, sedimentation and run-off water is conducted by or in conjunction with institutions governed by the board of regents.

87 Acts, ch 23, §36 SF 382
Section amended

467A.61 Discretionary inspection by commissioners—actions upon certain findings.

1. In addition to the authority granted by section 467A.47, the commissioners of a soil and water conservation district may inspect or cause to be inspected any land within the district on which they have reasonable grounds to believe that soil erosion is occurring in excess of the limits established by the district's soil erosion control regulations. If the commissioners find from an inspection conducted under authority of either section 467A.47 or this section that soil erosion is occurring on that land in excess of the applicable soil loss limits established by the district's soil erosion control regulations, they shall send notice of that finding to the landowner or landowners of record, and to the occupant of the land if known to the commissioners. The notice shall describe the land affected and shall state as nearly as possible the extent to which soil erosion from that land exceeds the applicable soil loss limits.

a. If the commissioners find that the excessive erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which the excessive soil erosion is occurring, and that the rate of the excessive erosion is less than twice the applicable soil loss limit, the notice required by this subsection shall include or be accompanied by information regarding financial or other assistance which the commissioners are able to make available to the owner or occupant of the land to aid in achieving compliance with the applicable soil loss limits.

b. If the commissioners find that the excessive soil erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which it is occurring, but that the erosion is occurring at a rate equal to or greater than twice the applicable soil loss limit, the notice shall so state, shall include or be accompanied by the information required by paragraph "a" of this subsection, and shall be delivered by personal service or by restricted certified mail to each of the persons to whom the notice is directed. A notice given under this paragraph shall also include or be accompanied by information explaining the provisions of subsection 2.

2. Beginning January 1, 1985, or five years after the completion of the conservation folder for a particular farm unit pursuant to this section, whichever date is later, the commissioners of the soil and water conservation district in

which that farm unit is located may petition the district court for an appropriate order with respect to that farm unit if its owner or occupant has been sent a notice by the commissioners under subsection 1, paragraph "b" for three or more consecutive years. The commissioners' petition shall seek a court order which states a time not more than six months after the date of the order when the owner or occupant must commence, and a time when the owner or occupant must complete the steps necessary to comply with the order. The time allowed to complete the establishment of a temporary soil and water conservation practice employed to comply or advance toward compliance with the court's order shall be not more than one year after the date of that order, and the time allowed to complete the establishment of a permanent soil and water conservation practice employed to comply with the court's order shall be not more than five years after the date of that order. Section 467A.48 applies to a court order issued under this subsection. The steps required of the farm unit owner or operator by the court order are those which are necessary to do one of the following:

a. Bring the farm unit which is the subject of the order into compliance with its farm unit soil conservation plan, if such a plan had been agreed upon prior to the time the commissioners petitioned for the order.

b. Bring the farm unit which is the subject of the order into compliance with a plan developed for that farm unit by the commissioners, in accordance with guidelines established by the division of soil conservation, and presented to the court as a part of the commissioners' petition, if a farm unit soil conservation plan has not previously been agreed upon for that farm unit. A plan presented to the court by the commissioners under this paragraph shall specify as many alternative approved soil and water conservation practices as feasible, among which the owner or occupant of the farm unit may choose in taking the steps necessary to comply with the court's order.

c. Bring the farm unit which is the subject of the order into compliance with a soil conservation plan developed by the owner or occupant of that farm unit as an alternative to the proposed soil conservation plan developed by the commissioners, if the owner or occupant so petitions the court and the court finds that the owner or occupant's plan will bring the farm unit into conformity with the applicable soil loss limits of the district.

3. The commissioners may also cause an inspection of land within the district on which they have reasonable grounds to believe that a permanent soil and water conservation practice established with public cost-sharing funds is not being properly maintained or is being altered in violation of section 467A.7, subsection 16. If the commissioners find that the practices are not being maintained or have been altered in violation of section 467A.7, subsection 16, the commissioners shall issue an administrative order to the landowner who made the unauthorized removal, alteration or modification to maintain, repair, or reconstruct the permanent soil and water conservation practices. The requirement for maintenance and repair is for the length of life as defined in section 467A.7, subsection 16. Public cost-sharing funds are not available for the work under this order. If the landowner fails to comply with the administrative order, the commissioners may petition the district court for an order compelling compliance with the order. Upon receiving satisfactory proof, the court shall issue an order directing compliance with the administrative order and may modify the administrative order. The provisions of section 467A.50 relating to notice, appeals and contempt of court shall apply to proceedings under this subsection.

87 Acts, ch 23, §37, 38 SF 382

See Code editor's note

Subsection 1, unnumbered paragraph 1 amended

Subsection 2, unnumbered paragraph 1 amended

467A.62 Duties of commissioners and of owners and occupants of agricultural land—restrictions on use of cost-sharing funds.

The commissioners of each soil and water conservation district shall seek to implement or to assist in implementing the following requirements:

1. Each farm unit shall be furnished a conservation folder complying with the rules of the department by the soil and water conservation district in which the farm unit is located, not later than January 1, 1985, or as soon thereafter as adequate funding is available to permit completion of a conservation folder for every farm unit in the state. Technical assistance in the development of the conservation folder may be provided by the United States department of agriculture soil conservation service through the memorandum of understanding with the district or by the department. The department shall provide by rule that an updated farm plan prepared for a particular farm unit within ten years prior to the effective date of this subsection shall be considered an adequate replacement for the conservation folder for that farm unit. Upon completion of the conservation folder for a particular farm unit, the district shall send the owner of that farm unit, and also the operator of the farm unit if known by the commissioners to be other than the owner, a letter offering that person or those persons a copy of the folder. The district shall keep a record of the date the folder is completed and the letter is sent. The folder shall be updated from time to time by the district as it deems necessary.

2. The commissioners of each soil and water conservation district shall complete preparation of a farm unit soil conservation plan for each farm unit within the district, not later than January 1, 1985, or five years after completion of the conservation folder for that farm unit, whichever date is later, or as soon thereafter as adequate funding is available to permit compliance with this requirement. Technical assistance in the development of the farm unit soil conservation plan may be provided by the United States department of agriculture soil conservation service through the memorandum of understanding with the district or by the department. The commissioners shall make every reasonable effort to consult with the owner and, if appropriate, with the operator of that farm unit, and to prepare the plan in a form which is acceptable to that person or those persons. The plan shall be drawn up and completed without expense to the owner or operator of the farm unit, except that the owner or operator shall not be reimbursed for the value of the owner's or occupant's own time devoted to participation in the preparation of the plan. If the commissioners' plan is unacceptable to the owner or operator of the farm unit, that person or those persons may prepare an alternative farm unit soil conservation plan identifying permanent or temporary soil and water conservation practices which may be expected to achieve compliance with the soil loss limit or limits applicable to that farm unit, and submit that plan to the soil and water conservation district commissioners for their review.

3. Within one year after completion of a farm unit soil conservation plan for a particular farm unit which is acceptable both to the commissioners of the soil and water conservation district within which the farm unit is located and to the owner and, if appropriate, to the operator of that farm unit, the commissioners shall offer to enter into a soil conservation agreement with the owner, and also with the operator if appropriate, based on the mutually acceptable farm unit soil conservation plan.

87 Acts, ch 17, §10 SF 271; 87 Acts, ch 23, §39 SF 382

Subsection 2, Code 1987, affirmed and reenacted effective April 17, 1987; legislative findings; 87 Acts, ch 17, §1, 12 SF

271

Section amended

467A.63 Right of purchaser of agricultural land to obtain information.

A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain from the seller, or from the office of the soil and water

conservation district in which the land is located, a copy of the most recently updated conservation folder and of any farm unit soil conservation plan, developed pursuant to section 467A.62, subsection 2, which are applicable to the agricultural land proposed to be purchased. A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain additional copies of either or both of the documents referred to in this section from the office of the soil and water conservation district in which the land is located, promptly upon request, at a fee not to exceed the cost of reproducing them. All persons who identify themselves to the commissioners or staff of a soil and water conservation district as prospective purchasers of agricultural land in the district shall be given information, prepared in accordance with rules of the department, which clearly explains the provisions of section 467A.65.

87 Acts, ch 23, §40 SF 382
Section amended

467A.64 Erosion control plans required for certain projects.

1. If a political subdivision has adopted a sediment control ordinance which the commissioners and the political subdivision jointly agree is at least as equally effective as the commissioners' rules in preventing erosion from exceeding the established soil loss limits, the commissioners and the political subdivision shall execute an agreement under chapter 28E allowing an agency authorized by the political subdivision to receive and file an affidavit from a person, prior to initiating a land disturbing activity in that subdivision, stating that the proposed activity will not exceed the established soil loss limits. A copy of the affidavit shall be mailed to the district as a part of the terms of the agreement. The affidavit shall be in a form prescribed by the department and made available by the district.

2. Prior to initiating a land disturbing activity in a political subdivision which has not adopted sediment control ordinances as described in subsection 1, a person engaged in the land disturbing activity shall file a signed affidavit with the soil and water conservation district that the project will not exceed the soil loss limits. The affidavit shall be in a form prescribed by the department and made available by the district.

3. For the purposes of this section, "land disturbing activity" means a land change such as the tilling, clearing, grading, excavating, transporting or filling of land which may result in soil erosion from water or wind and the movement of sediment and sediment related pollutants into the waters of the state or onto lands in the state but does not include the following:

- a. Tilling, planting or harvesting of agricultural, horticultural or forest crops.
- b. Preparation for single-family residences separately built unless in conjunction with multiple construction in subdivision development.
- c. Minor activities such as home gardens, landscaping, repairs and maintenance work.
- d. Surface or deep mining.
- e. Installation of public utility lines and connections, fence posts, sign posts, telephone poles, electric poles and other kinds of posts or poles.
- f. Septic tanks and drainage fields unless they are to serve a building whose construction is a land disturbing activity.
- g. Construction and repair of the tracks, right of way, bridges, communication facilities and other related structures of a railroad.
- h. Emergency work to protect life or property.
- i. Disturbed land areas of less than twenty-five thousand square feet unless a political subdivision by ordinance establishes a smaller exception or establishes conditions for this exception.
- j. The construction, relocation, alteration or maintenance of public roads by a public body.

4. If the agency authorized under subsection 1 determines that a land disturbing activity is not being conducted in compliance with the soil loss limits, it shall file a written and signed complaint with the soil and water conservation district commissioners. The complaint shall have the same effect and validity as a complaint filed by an owner or occupant of land being damaged by sediment pursuant to section 467A.47. If the affidavit is filed with the district or the political subdivision, the commissioners may proceed on their own complaint. The soil and water conservation district commissioners may issue an administrative order as provided in that section to the person conducting the land disturbing activity.

87 Acts, ch 23, §41 SF 382
Subsections 2 and 4 amended

467A.65 Cost sharing for certain lands restricted.

1. It is the intent of this chapter that, effective January 1, 1981, each tract of agricultural land which has not been plowed or used for growing row crops at any time within fifteen years prior to that date, shall for purposes of this section be considered classified as agricultural land under conservation cover. If a tract of land so classified is thereafter plowed or used for growing row crops, the commissioners of the soil and water conservation district in which the land is located shall not approve use of state cost-sharing funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-sharing funds which would be available for that land if it were not considered classified as agricultural land under conservation cover. The restriction imposed by this section applies even if an administrative order or court order has been issued requiring establishment of soil and water conservation practices on that land. The commissioners may waive the restriction imposed by this section if they determine in advance that the purpose of plowing or row cropping land classified as land under conservation cover is to revitalize permanent pasture and that the land will revert to permanent pasture within two years after it is plowed.

2. When receiving an application for state cost-sharing funds to pay a part of the cost of establishing a permanent or temporary soil and water conservation practice, the commissioners of the soil and water conservation district to which the application is submitted shall require the applicant to state in writing whether, to the best of the applicant's knowledge, the land on which the proposed practice will be established is land considered to be classified as agricultural land under conservation cover, as defined in subsection 1. An applicant who knowingly makes a false statement of material facts or who falsely denies knowledge of material facts in completing the written statement required by this subsection commits a simple misdemeanor and, in addition to the penalty prescribed therefor by law, shall be required to repay to the department any cost-sharing funds made available to the applicant in reliance on the false statement or false denial.

87 Acts, ch 23, §42 SF 382
Section amended

467A.66 Procedure when commissioner is complainant.

A soil and water conservation district commissioner who is an owner or occupant of land being damaged by sediment has the same right as any other person in like circumstances to file a complaint under section 467A.47; however, a commissioner who is the complainant shall not vote on the question whether, on the basis of the inspection made pursuant to the complaint, the commissioners shall issue an administrative order under section 467A.47.

87 Acts, ch 23, §43 SF 382
Section amended

467A.71 Conservation practices revolving loan fund.

1. The division may establish a conservation practices revolving loan fund composed of any money appropriated by the general assembly for that purpose,

and of any other moneys available to and obtained or accepted by the committee from the federal government or private sources for placement in that fund. Except as otherwise provided by subsection 3, the assets of the conservation practices revolving loan fund shall be used only to make loans directly to owners of land in this state for the purpose of establishing on that land any new permanent soil and water conservation practice which the commissioners of the soil and water conservation district in which the land is located have found is necessary or advisable to meet the soil loss limits established for that land. A loan shall not be made for establishing a permanent soil and water conservation practice on land that is subject to the restriction on state cost-sharing funds of section 467A.65. Revolving loan funds and public cost-sharing funds shall not be used in combination for funding a particular soil and water conservation practice. Each loan made under this section shall be for a period not to exceed ten years, shall bear no interest, and shall be repayable to the conservation practices revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants are eligible for no more than ten thousand dollars in loans outstanding at any time under this program. "*Permanent soil and water conservation practices*" has the same meaning as defined in section 467A.42 and those established under this program are subject to the requirements of section 467A.7, subsection 16. Loans made under this program shall come due for payment upon sale of the land on which those practices are established.

2. The general assembly finds and declares the following:

a. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa's prosperity.

b. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state.

c. The use of state funds for the conservation practices revolving loan fund established under subsection 1 is in the public interest, and the purposes of this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

3. The division may:

a. Contract, sue and be sued, and promulgate administrative rules necessary to carry out the provisions of this section, but the committee shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

b. Authorize payment from the conservation practices revolving loan fund, from fees and from any income received by investments of money in the fund for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

4. This section does not negate the provisions of section 467A.48 that an owner or occupant of land in this state shall not be required to establish any new soil and water conservation practice unless public cost-sharing funds have been approved and are available for the land affected. However, the owner of land with respect to which an administrative order to establish soil and water conservation practices has been issued under section 467A.47 but not complied with for lack of public cost-sharing funds, may waive the right to await availability of such funds and instead apply for a loan under this section to establish any permanent soil and water conservation practices necessary to comply with the order. If a landowner does so, that loan application shall be given reasonable preference by the state soil conservation committee if there are applications for more loans under this section than can be made from the money available in the conservation practices

revolving loan fund. If it is found necessary to deny an application for a soil and water conservation practices loan to a landowner who has waived the right to availability of public cost-sharing funds before complying with an administrative order issued under section 467A.47, the landowner's waiver is void.

87 Acts, ch 23, §44 SF 382
Subsection 1 amended

CHAPTER 467B

FLOOD AND EROSION CONTROL

467B.1 Authority of board.

If a county, soil and water conservation district, subdistrict of a soil and water conservation district, water resource district, political subdivision of the state, or other local agency engages or participates in a project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in co-operation with the federal government, or any department or agency of the federal government, the counties in which the project is carried on may, through the board of supervisors, construct, operate, and maintain the project on lands under the control or jurisdiction of the county dedicated to county use, or furnish financial and other assistance in connection with the projects. Flood, soil erosion control, and watershed improvement projects are presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare.

87 Acts, ch 23, §45 SF 382
Section amended

467B.2 Federal aid.

A county may, in accordance with this chapter, accept federal funds for aid in a project for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may co-operate with the federal government or a department or agency of the federal government, a soil and water conservation district, subdistrict of a soil and water conservation district, water resource district, political subdivision of the state, or other local agency, and the county may assume a proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the project on lands under the control or jurisdiction of the county which will not be discharged by federal aid or grant.

87 Acts, ch 23, §46 SF 382
Section amended

467B.3 Co-operation.

The counties, and soil and water conservation districts, subdistricts of soil and water conservation districts concerned, and water resource districts, shall advise and consult with each other, upon the request of any of them or any affected landowners, and may co-operate with each other or with other state subdivisions or instrumentalities, and affected landowners, as well as with the federal government or a department or agency of the federal government, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use.

87 Acts, ch 23, §47 SF 382
Section amended

467B.5 Maintenance cost.

If construction of projects has been completed by the soil and water conservation district, subdistricts of soil and water conservation districts, water resource

districts, political subdivisions of the state, or other local agencies, or the federal government, or any department or agency of the federal government, on private lands under the easement granted to the county, only the cost of maintenance may be assumed by the county.

87 Acts, ch 23, §48 SF 382
Section amended

467B.10 Assumption of obligations.

This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection with them, will be assumed by the soil and water conservation district, subdistrict of a soil and water conservation district, water resource district, or the federal government and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal co-operation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties.

87 Acts, ch 23, §49 SF 382
Section amended

CHAPTER 467C

SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

467C.5 Approval of commissioners.

A district shall not be established by a board of supervisors under this chapter unless the organization of the district is approved by the commissioners of a soil and water conservation district established under chapter 467A and which is included all or in part within the district, nor shall a district be established without the approval of the department of natural resources.

87 Acts, ch 23, §50 SF 382
Section amended

CHAPTER 467D

WATER RESOURCE DISTRICTS

Chapter repealed effective July 1, 1988; 86 Acts, ch 1245, §668

467D.17 Plan presented to division, department of natural resources, and soil and water conservation districts.

The board shall tentatively adopt the plan by resolution and shall present the plan to the division and the department of natural resources for review. The department of natural resources shall within ninety days review the plan as presented and make recommendations it deems necessary to bring the water resource district's plan into conformity with the comprehensive water allocation plan established pursuant to section 455B.263. The recommendations of the department of natural resources shall be submitted to the board for incorporation into the plan. The plan shall then be submitted to the soil and water conservation districts located entirely or partially within the water resource district. The soil and water conservation districts shall review, comment, and record a vote within ninety days indicating their support of or opposition to the plan in the same manner provided in section 467D.5, subsection 1. The division shall inform the soil and water conservation districts of the votes of the districts within the water resource district. The division shall review the plan as presented, give consideration to the comments and votes of the soil and water conservation districts, give

final approval or disapproval of the plan within ninety days, and provide a written statement detailing the basis of its decision.

A subsequent major change in the plan, as determined by the water resource board, is not effective until approved by the process provided in this section for approval of the original plan.

87 Acts, ch 23, §51 SF 382
Section amended

467D.22 Procedure after finding.

When the water resource district's plan calls for an internal improvement which cannot be undertaken due to a finding that the internal improvement would not be adequately protected against siltation, the board shall undertake to effect the development of the needed soil and water conservation practices in the watershed of the proposed internal improvement by:

1. Consultation and co-operation with, and appropriate assistance to, the commissioners of a soil and water conservation district in the state.

2. Securing the establishment of, or repair or maintenance within, a sub-district of a soil and water conservation district, a soil conservation and flood control district, a drainage district, a levee district, a sanitary district, or other appropriate special district, in the manner prescribed by law.

87 Acts, ch 23, §52 SF 382
Subsections 1 and 2 amended

467D.23 Erosion as nuisance—injunction.

Soil erosion resulting in or contributing to damage by siltation to any internal improvement of a water resource district, or resulting in or contributing to damage to property not owned by the owner or occupant of the land on which the erosion is occurring, is a nuisance. The board of the water resource district whose internal improvement is so damaged, the commissioners of the soil and water conservation district within which the erosion is occurring, or the owner or owners of any property so damaged, may bring action to enjoin and abate any such nuisance as provided by chapter 657. It is an adequate defense to the action that a defendant, prior to the time the cause of action arose, had submitted application for public cost-sharing funds pursuant to section 467A.48, or had established or maintained soil and water conservation practices or erosion control practices approved by the commissioners of the soil and water conservation district in which the erosion complained of occurred, or had taken other reasonable and prudent measures to prevent excessive soil erosion, and that the erosion complained of was an isolated occurrence caused by a single prolonged or unusually heavy rainfall, unusually rapid melting of accumulated snow, severe windstorm, or other similar event beyond the control of the defendant. The remedy for soil erosion which constitutes a nuisance under this section is limited to requiring that the owner or occupant of the land on which the erosion is occurring take measures as necessary to comply with the regulations of the soil and water conservation district in which the land is located, and the fine and jail sentence provided by section 657.3 does not apply in an action arising under this section.

87 Acts, ch 23, §53 SF 382
Section amended

467D.24 Surveys—soundings—drillings.

The board, the commissioners of a soil and water conservation district, or an engineer or any other authorized person employed by the board or commissioners, may after thirty days' written notice by restricted certified mail addressed to the owner and also to the occupant, enter upon private land for the purpose of making surveys, soundings, drillings, appraisals, and examinations as deemed appropriate or necessary to determine the advisability or practicability of locating an internal improvement on the land or part of it, or to determine whether soil erosion is occurring on the land which constitutes a nuisance under section

467D.23 or is in violation of the soil and water conservation district's regulations; provided, no soundings or drillings shall be made within twenty rods of the dwelling house or buildings on the land without the written consent of the owner. Entry, after notice, is not a trespass, and the board or commissioners may be aided by injunction to insure peaceful entry. The board shall pay actual damages caused by the entry, surveys, soundings, drillings, appraisals, or examinations. The amount of such damages, if any, shall be determined by agreement or in the manner provided for the award of damages in condemnation of land for water resource district purposes.

87 Acts, ch 23, §54 SF 382
Section amended

CHAPTER 467E

AGRICULTURAL ENERGY MANAGEMENT

467E.1 Agricultural energy management fund.

1. The agricultural energy management fund is created within the department of agriculture and land stewardship. The fund shall be used to finance education and demonstration projects regarding tillage practices and the management of fertilizer and pesticide use which result in management practices that reduce energy inputs in agriculture and reduce potential for groundwater contamination.

2. An agricultural energy management advisory council is established which shall consist of the secretary of agriculture and the chief administrator of each of the following organizations or the administrator's designee:

- a. The energy and geological resources division of the department of natural resources.
- b. The environmental protection division of the department of natural resources.
- c. Iowa State University of science and technology college of agriculture.
- d. Iowa State University of science and technology college of engineering.
- e. Iowa state water resource research institute.
- f. State University of Iowa department of preventative medicine and environmental health.
- g. Division of soil conservation of the department of agriculture and land stewardship.
- h. Iowa cooperative extension service in agriculture and home economics.
- i. The University of Northern Iowa.
- j. The state hygienic laboratory.

The secretary of agriculture shall coordinate the appointment process for compliance with section 69.16A.

The secretary of agriculture shall be the chairperson of the council. The presiding officers of the senate and house shall each appoint two nonvoting members, not more than one of any one political party, to serve on the advisory council for a term of two years. The council may invite the administrators of the United States geological survey and the federal environmental protection agency to each appoint a person to meet with the council in an advisory capacity. The council shall meet quarterly or upon the call of the chairperson. The council shall review possible uses of the fund and the effectiveness of current and past expenditures of the fund. The council shall make recommendations to the department of agriculture and land stewardship on the uses of the fund.

3. The department of agriculture and land stewardship shall report annually to the standing committees on energy and environmental protection of the house and senate on the projects conducted with the agricultural energy management fund.

87 Acts, ch 225, §232 HF 631
Subsection 2 amended

CHAPTER 471

EMINENT DOMAIN

471.4 Right conferred.

The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon counties.

2. *Owners of land without a way to the land.* Upon the owner or lessee of lands, which have no public or private way to the lands, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with an existing public road. The condemned public way shall be located on a division, subdivision or "forty" line, or immediately adjacent thereto, and along the line which is the nearest feasible route to an existing public road, or along a route established for a period of ten years or more by an easement of record or by use and travel to and from the property by the owner and the general public. The public way shall not interfere with buildings, orchards, or cemeteries. When passing through enclosed lands, the public way shall be fenced on both sides by the condemner upon request of the owner of the condemned land. The condemner or the condemner's assignee, shall provide easement for access to the owner of property severed by the condemnation. The public way shall be maintained by the condemner or the condemner's assignee, and shall not be considered any part of the primary or secondary road systems.

A public way condemned under this subsection shall not be considered an existing public road in subsequent condemnations to provide a public way for access to an existing public road.

3. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway right of way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right of way shall not interfere with buildings, orchards, or cemeteries, and when passing through enclosed lands, fences shall be built and maintained on both sides thereof by the party condemning the land and by that party's assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

4. *Cemetery associations.* Upon any private cemetery or cemetery association which is incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing.

5. *Subdistricts of soil and water conservation districts.* Upon a subdistrict of a soil and water conservation district for land or rights or interests in the land as reasonable and necessary to carry out the purposes of the subdistrict.

6. *Cities.* Upon all cities for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities.

87 Acts, ch 23, §55 SF 382
Subsection 5 amended

CHAPTER 476

PUBLIC UTILITY REGULATION

476.1C Applicability of authority—certain gas utilities.

1. Gas public utilities having less than two thousand customers are not subject to the regulation authority of the utilities board under this chapter unless otherwise specifically provided. Sections 476.10, 476.20, 476.21, and 476.51 apply to such gas utilities.

Gas public utilities having less than two thousand customers shall keep books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board. The board may inspect the accounts of the utility at any time.

A gas public utility having less than two thousand customers may make effective a new or changed rate, charge, schedule, or regulation after giving written notice of the proposed new or changed rate, charge, schedule, or regulation to all affected customers served by the public utility. The notice shall inform the customers of their right to petition for a review of the proposal to the utilities board within sixty days after notice is served if the petition contains the signatures of at least one hundred of the gas utility's customers. The notice shall state the address of the utilities board. The new or changed rate, charge, schedule, or regulation takes effect sixty days after such valid notice is served unless a petition for review of the new or changed rate, charge, schedule, or regulation signed by at least one hundred of the gas utility's customers is filed with the board prior to the expiration of the sixty-day period.

If such a valid petition is filed with the board within the sixty-day period, any new or changed rate, charge, schedule, or regulation shall take effect, under bond or corporate undertaking, subject to refund of all amounts collected in excess of those amounts which would have been collected under the rates or charges finally approved by the board. The board shall within five months of the date of filing make a determination of just and reasonable rates based on a review of the proposal, applying established regulatory principles. The board may call upon the gas public utility and its customers to furnish factual evidence in support of or opposition to the new or changed rate, charge, schedule, or regulation. If the gas public utility disputes the finding, the utility may within twenty days file for further review, and the board shall docket the case as a formal proceeding under section 476.6, subsection 7, and set the case for hearing. The gas public utility shall submit factual evidence and written argument in support of the filing.

A gas public utility having less than two thousand customers shall not make effective a new or changed rate, charge, schedule, or regulation which relates to services for which a rate change is pending within twelve months following the date the petition to review the prior proposed rate, charge, schedule, or regulation was filed with the board or until the board has made its determination of just and reasonable rates, whichever date is earlier, unless the utility applies to the board for authority and receives authority to make a subsequent rate change at an earlier date.

Gas public utilities having less than two thousand customers shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage. Rates charged by a gas public utility having less than two thousand customers for

transportation of customer-owned gas shall not exceed the actual cost of such transportation services including a fair rate of return.

2. If, as a result of a review of a proposed new or changed rate, charge, schedule, or regulation of a gas public utility having fewer than two thousand customers, the consumer advocate alleges in a filing with the board that the utility rates are excessive, the disputed amounts shall be specified by the consumer advocate in the filing. The gas public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of the filing which are in excess of rates or charges finally determined by the board to be lawful. If after formal proceeding and hearing pursuant to section 476.6 the board finds that the utility rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest. If the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

87 Acts, ch 21, §1 SF 209
Effective April 21, 1987
NEW section

476.6 Changes in rates, charges, schedules and regulations—supply and cost review.

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 11 and 13.

A subscriber of a telephone exchange or service, who is declared to be legally blind under section 422.12, subsection 1, paragraph "e", is exempt from any charges for telephone directory assistance that may be approved by the board.

2. *Telephone directory assistance charges—record provided.* The board shall not approve a schedule of directory assistance charges unless the schedule provides that residential customers be provided a record of the date and time of each directory assistance call made from their residence.

3. *Telephone directory assistance charges—approval by board.* Notwithstanding contrary provisions of this section, a public utility shall not implement a charge for telephone directory assistance or implement a new or changed rate for telephone directory assistance except pursuant to a tariff that has been filed with the board and finally approved by the board.

4. *First seven calls exempted.* A telephone directory assistance tariff that is approved by the board on or after July 1, 1981, shall be subject to the limitation that a subscriber shall not be charged for the first seven directory assistance calls made from the subscriber's station during each of the first twelve months in which the tariff is in effect, and a charge made in violation of this limitation is an unlawful charge within the meaning of this chapter.

5. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file

a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

6. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

7. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 13.

8. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 7, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 9, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

9. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

10. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

11. *Automatic adjustments permitted.* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

If an automatic adjustment is used, the adjustment must be reduced to zero at least once in every twelve-month period, and all appropriate charges collected by the automatic adjustment shall be incorporated in the utility's other rates at that time.

12. *Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

13. *Temporary authority.* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules or regulations shall, for purposes of computing the ninety-day and ten-month limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

14. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

15. *Natural gas supply and cost review.* The board shall periodically, but not less than annually, conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified twelve-month period. The description of the major contracts and arrangements shall include the price of gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the board. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility, and such other information as the board may require.

Contemporaneously with the natural gas procurement plan, the public utility shall file with the board a five-year forecast of the gas requirement of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the utility's principal pipeline suppliers and their major sources of gas, and such other information as the board may require.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. In evaluating the gas procurement plan, the board shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to the utility's customers; the availability of gas in storage; the appropriate legal and regulatory actions which the utility could take to minimize the cost of purchased gas; the gas procurement practices of the utility; and other relevant factors. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

The board shall also evaluate the five-year forecast filed by the public utility. The board may indicate any cost items in the five-year forecast that on the basis

of present evidence in the record the board would be unlikely to permit the utility to recover from its customers in rates, charges or purchased gas clauses established in the future. Nothing in this section prohibits the board from disallowing the recovery of other related or unrelated costs on the basis of evidence received in a later contested case proceeding.

The board shall adopt rules pursuant to chapter 17A to implement the provisions of this section prior to January 1, 1984.

16. *Annual electric energy supply and cost review.* The board shall conduct an annual proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel costs, the board shall not allow the utility to recover from its customers fuel costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

Contemporaneously with the annual review proceeding, the board shall analyze the electric generating capacity needs for the next decade by the public utility's customers, under procedures established by the board. The utility shall file information regarding future capacity needs of its customers as deemed appropriate by the board.

87 Acts, ch 21, §2 SF 209
Amendment to subsection 7 effective April 21, 1987
Subsection 7 amended

476.8A Tax reform act rate adjustment.

The utilities board may require a rate-regulated investor-owned public utility to file revised rates to reflect the provisions of applicable state tax reform and the provisions of the federal Tax Reform Act of 1986. In lieu of filing revised rates to reflect the change in state and federal taxes, a public utility may file for a general rate change under section 476.6. If the public utility has not received board approval to collect the revised rates by July 1, 1987, the utility shall file a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of those amounts which would have been collected under the rates finally approved by the board. The utilities board shall adopt rules implementing this section.

A utility may delay implementation of the revised rates required by this section until September 30, 1987, if sufficient bond or corporate undertaking is approved and on file with the board. The bond or corporate undertaking shall be one and one-half times the estimated refund obligation accrued during the delay in implementing the revised rates. A utility having pledged a bond or corporate undertaking pursuant to this section may file for a general rate proceeding by September 30, 1987, with the historical test year ending June 30, 1987.

87 Acts, ch 193, §1 HF 640
Effective June 4, 1987
NEW section

CHAPTER 478

ELECTRIC TRANSMISSION LINES

478.4 Franchise—hearing.

The utilities board shall consider said petition and any objections filed thereto in the manner hereinafter provided. It shall examine the proposed route or cause any engineer selected by it to do so. If a hearing is held on the petition it may hear such testimony as may aid it in determining the propriety of granting such

franchise. It may grant such franchise in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to location and route as may seem to it just and proper. Before granting such franchise, the utilities board shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. No franchise shall become effective until the petitioners shall pay, or file an agreement to pay, all costs and expenses of the franchise proceeding, whether or not objections are filed, including costs of inspections or examinations of the route, hearing, salaries, publishing of notice, and any other expenses reasonably attributable thereto. The funds received for the costs and the expenses of the franchise proceeding shall be remitted to the treasurer of state for deposit in the utilities trust fund.

87 Acts, ch 234, §431 HF 671
Section amended

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

479.16 Use of funds.

All moneys received under the provisions of this chapter shall be remitted monthly to the treasurer of state and credited to the utilities trust fund.

87 Acts, ch 234, §432 HF 671
Section amended

479.47 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. The additional costs shall be paid by the pipeline company upon presentation of an invoice, verified by the county engineer or soil and water conservation district conservationist and specifically showing the added costs caused by the presence of the pipeline. A copy of the county engineer's or district conservationist's verification of additional costs shall accompany the invoice to the pipeline company.

Before performing earthwork, tiling, or excavation within three hundred feet of an existing pipeline, a landowner, tenant, contractor, or the representative of any one of them shall notify the pipeline company or its representative by calling the pipeline company telephone number listed on the roadside right-of-way marker. The pipeline company shall mark the location of the existing pipeline within forty-eight hours of notification with appropriate marker flags or stakes on the land surface directly above the pipeline for a distance of one hundred fifty feet either side of the proposed work site. Markers shall be placed at twenty-five foot intervals, where physically possible, along the pipeline route indicating the diameter of the pipeline. The pipeline company shall not charge the landowner, tenant, or contractor for the placement of the markers. Excavation, earthwork, or tiling shall not be commenced in that area until the markers are in place and the pipeline company representative is present and has notified the contractor of the depth at the site of crossing. The pipeline company representative shall be present during all the excavation, earthwork, or tiling within the marked area when that area is any one of the following:

- (1) Land located outside the corporate limits of a city.
- (2) Agricultural land within the corporate limits of a city.
- (3) Nonagricultural land within the corporate limits of a city when the pipeline facility is operated at a pressure in excess of one hundred fifty pounds per square inch. As used in this paragraph agricultural land means land of one or more acres

suitable for cultivation for the production of crops, fruit or other horticultural purposes or for the grazing or production of livestock.

87 Acts, ch 23, §56 SF 382
Unnumbered paragraph 1 amended

CHAPTER 480

UNDERGROUND FACILITIES INFORMATION

480.1 Definitions.

1. "*Excavation*" means an operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures.

2. "*One-call system*" means an organization or office established by two or more underground facility operators for the purpose of receiving notice of intent to excavate from an excavator and transmitting the information in the notice to the participating underground facility operators.

3. "*Person*" means a person as defined in section 4.1, subsection 13.

4. "*Underground facility*" means an item of personal property which is buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic, or telegraphic communications, electric energy, oil, gas, or other substances, and includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property.

5. "*Excavator*" means a person proposing to engage or engaging in excavation.

6. "*Underground facility operator*" means a person owning or operating underground facilities including, but not limited to, public, private, and municipal utilities.

87 Acts, ch 135, §1 HF 646
NEW section

480.2 Public deposit of location information.

1. Within six months after July 1, 1987, every underground facility operator shall deposit with the county recorder sufficient copies of information, in a form which can be easily received and updated, delineating the townships and cities within the county in which underground facilities are owned or operated by the underground facility operator, except that the underground facility operator is not required to deposit information relating to underground facilities located on real property owned by the underground facility operator. However, for underground facilities located in a city with a population of two thousand or more within a county with a population of twenty-five thousand or more, based on the most recent federal decennial census, the underground facility operator shall deposit the information with the clerk of that city rather than with the county recorder. The underground facility operator shall promptly update the information on deposit. The information shall include the underground facility operator's name, address, and a telephone number or numbers answered twenty-four hours a day, seven days a week.

2. In lieu of depositing information describing the underground facilities owned or operated within a county or city as required by this section, an underground facility operator may designate a one-call system to receive notice of intent to excavate from an excavator and shall deposit only the name, address, and a telephone number or numbers, answered twenty-four hours a day, seven days a week, of the one-call system with the county recorder or city clerk respectively.

3. County recorders and city clerks shall not assess any fees for the depositing of information by underground facility operators or by a one-call system in the recorder's or clerk's office.

87 Acts, ch 135, §2 HF 646
NEW section

480.3 Information available to excavators—immunity from liability.

1. The county recorder or the city clerk, respectively, shall provide access to any pertinent information on deposit by township or city to the excavator, or shall provide the name, address, and a telephone number or numbers, answered twenty-four hours a day, seven days a week, of a pertinent one-call system.

2. Counties and county recorders, and cities and city clerks are immune from any civil or criminal liability for receiving and providing access to the information required to be deposited with and made available from the recorders' or clerks' offices by this chapter.

87 Acts, ch 135, §3 HF 646
NEW section

CHAPTER 491

CORPORATIONS FOR PECUNIARY PROFIT

491.5 Articles adopted and recorded.

Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators. Said articles shall then be forwarded to the secretary of state. Upon the filing of such articles, the secretary of state shall issue a certificate of incorporation and record said articles in a book kept for that purpose. The secretary of state shall then forward said articles to the county recorder of deeds of the county where the principal place of business is to be located, there to be recorded in a book kept therefor, and the recorder shall endorse thereon the book and page where the record will be found.

Such articles shall contain:

1. Name of corporation and its principal place of business.
2. The objects for which it is formed.
3. The amount of authorized capital stock, the classes of stock and number of shares authorized, with the par value and conditions of each class of such shares, and the time when and conditions under which it is to be paid in.
4. The time of commencement and existence of the corporation.
5. The names and addresses of the incorporators and the officers or persons its affairs are to be conducted by, and the times when and manner in which such officers will be elected.
6. Whether private property is to be exempt from corporate debts.
7. The manner in which the articles may be amended.
8. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders or members for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its shareholders or members, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the director derives an improper personal benefit. A

provision in the articles of incorporation shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision becomes effective.

87 Acts, ch 212, §2 SF 471
NEW subsection 8

CHAPTER 496A

BUSINESS CORPORATIONS

496A.4A Indemnification of directors and officers.

1. As used in this section:

a. "*Director*" means a person who is or was a director of the corporation and a person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan. Heirs, executors, personal representatives, and administrators of the person are included.

b. "*Corporation*" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

c. "*Expenses*" includes attorneys' fees.

d. "*Official capacity*" means:

(1) When used with respect to a director, the office of director in the corporation, and

(2) When used with respect to a person other than a director, as contemplated in subsection 9, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

e. "*Party*" includes a person who was, is, or is threatened to be made, a named defendant or respondent in a proceeding.

f. "*Proceeding*" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

2. A corporation shall have power to indemnify any person made a party to any proceeding by reason of the fact that the person is or was a director if:

a. The person acted in good faith; and

b. The person reasonably believed

(1) In the case of conduct in the person's official capacity with the corporation, that the conduct was in its best interests, and

(2) In all other cases, that the person's conduct was at least not opposed to its best interests, and

c. In the case of any criminal proceeding, the person had no reasonable cause to believe the person's conduct was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses, actually incurred by the person in connection with the proceeding; except that if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect of any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

3. A director shall not be indemnified under subsection 2 in respect of any proceeding charging improper personal benefit to the director, whether or not

involving action in the director's official capacity, in which the director shall have been adjudged to be liable on the basis that personal benefit was improperly received by the director.

4. Unless limited by the articles of incorporation,

a. A director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection 2 shall be indemnified against reasonable expenses incurred by the director in connection with the proceeding; and

b. A court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, shall have authority to order indemnification in the following circumstances:

(1) If it determines a director is entitled to reimbursement under paragraph "a", the court shall order indemnification, in which case the director shall also be entitled to recover the expenses of securing such reimbursement; or

(2) If it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director has met the standard of conduct set forth in subsection 2 or has been adjudged liable in the circumstances described in subsection 3, the court may order such indemnification as the court shall deem proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability shall have been adjudged in the circumstances described in subsection 3 shall be limited to expenses. A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

5. No indemnification under subsection 2 shall be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in subsection 2. Such determination shall be made:

a. By the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

b. By special legal counsel, selected by the board of directors by vote as set forth in paragraph "a" of this subsection 5, or, if the requisite quorum of the full board cannot be obtained therefor, by a majority vote of the full board, in which selection directors who are parties may participate; or

c. By the shareholders. Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in paragraph "b" of this subsection for the selection of such counsel. Shares held by directors who are parties to the proceeding shall not be voted on the subject matter under this subsection 5.

6. Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of

a. A written affirmation by the director of the director's good faith belief that the director has met the standard of conduct necessary for indemnification by the corporation as authorized in this section, and

b. A written undertaking by or on behalf of the director to repay such amount if it shall ultimately be determined that the director has not met such standard of conduct, and after determination that the facts then known to those making the determination would not preclude indemnification under this section. The undertaking required by this paragraph shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to

financial ability to make repayment. Determinations and authorizations of payments under this subsection 6 shall be made in the manner specified in subsection 5.

7. Except as limited in subsection 2 with respect to proceedings by or in the right of the corporation, the indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section are not exclusive of any other rights to which those seeking indemnification or advancement of expenses are entitled under a provision in the articles of incorporation or bylaws, agreements, vote of shareholders or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. However, the provisions or agreements shall not provide indemnification for a breach of the director's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, for a transaction from which the director derives an improper personal benefit, or under section 496A.44.

8. For purposes of this section, the corporation shall be deemed to have requested a director to serve an employee benefit plan whenever the performance by the director of the director's duties to the corporation also imposes duties on, or otherwise involves services by, the director to the plan or participants or beneficiaries of the plan; excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be deemed fines; and action taken or omitted by the director with respect to an employee benefit plan in the performance of the director's duties for a purpose reasonably believed by the director to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

9. Unless limited by the articles of incorporation:

a. An officer of the corporation shall be indemnified as and to the same extent provided in subsection 4 for a director and shall be entitled to the same extent as a director to seek indemnification pursuant to the provisions of subsection 4;

b. A corporation shall have the power to indemnify and to advance expenses to an officer, employee or agent of the corporation to the same extent that it may indemnify and advance expenses to directors pursuant to this section; and

c. A corporation, in addition, shall have the power to indemnify and to advance expenses to an officer, employee or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

10. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of this section.

11. Any indemnification of, or advance of expenses to, a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with or before the notice of the next shareholders' meeting.

87 Acts, ch 212, §3, 4 SF 471
 Subsection 1, paragraph a amended
 Subsection 7 stricken and rewritten

496A.49 Articles of incorporation.

The articles of incorporation shall set forth:

1. The name of the corporation and the chapter of the Code or session laws under which incorporated.

2. The period of duration if for a limited period, but in the absence of any statement in the articles all corporations organized hereunder shall have perpetual duration.

3. The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this chapter.

4. The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

5. If the shares are to be divided into classes, the designation of each class and a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the shares of each class.

6. If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

7. Any provision limiting or denying to shareholders the pre-emptive right to acquire additional shares of the corporation and any provision giving to shareholders the pre-emptive right to acquire treasury shares of the corporation.

8. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this chapter is required or permitted to be set forth in the bylaws.

9. The address of its initial registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its initial registered agent or agents at such address.

10. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

11. The name and address of each incorporator.

12. The date on which the corporate existence shall begin, which may be any date identified by year, month and day not more than ninety days in the future. In the absence of any statement in the articles as to date of beginning of corporate existence, such existence shall commence on the date on which the secretary of state issues the certificate of incorporation.

13. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision shall not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, for a transaction from which the director derives an improper personal benefit, or under section 496A.44. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

14. Any provision not inconsistent with law or the purposes for which the corporation is organized, which the incorporators elect to set forth; or any provision limiting any of the corporate powers enumerated in this chapter.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

87 Acts, ch 212, §5 SF 471

NEW subsection 13 and former subsection 13 renumbered as 14

CHAPTER 497

CO-OPERATIVE ASSOCIATIONS

497.33 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §6 SF 471

NEW section

CHAPTER 498

NONPROFIT-SHARING CO-OPERATIVE ASSOCIATIONS

498.35 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §7 SF 471

NEW section

CHAPTER 499

CO-OPERATIVE ASSOCIATIONS

499.47A Sale or other disposition of assets in regular course of business and mortgage or pledge of assets.

The sale, lease, exchange, or other disposition of the property and assets of a cooperative association, when made in the usual and regular course of the business of the cooperative association, and the mortgage or pledge of any or all of the property and assets of the cooperative association, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other

corporation or cooperative association, domestic or foreign, as authorized by its board of directors; and in such case no authorization or consent of the members shall be required.

87 Acts, ch 88, §1 HF 356
NEW section

499.47B Sale or other disposition of assets other than in regular course of business.

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a cooperative association organized under this chapter, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other cooperative association organized under this chapter, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending the sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of the membership, which may either be an annual or a special meeting.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, or other disposition of substantially all of the property and assets of the cooperative association.

3. At the meeting the membership may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the cooperative association. Such authorization shall be approved if two-thirds of the members vote affirmatively on a ballot in which a majority of all voting members participate.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the members.

87 Acts, ch 88, §2 HF 356
NEW section

499.47C Sale or other disposition of assets in exchange for common stock.

In addition to the requirements of section 499.47B, in any case where a cooperative association issues its common stock or membership, or subscriptions for common stock or membership, or both, as a part or all of the consideration for the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of another cooperative association, the issuance of such common stock or membership, or subscriptions for common stock or membership, or both, shall be authorized by the issuing cooperative association in the following manner:

1. The board of directors shall adopt a resolution recommending the issuance of the common stock or membership, or subscriptions for common stock or membership, or both, and directing the submission thereof to a vote at a meeting of the membership, which may be either an annual or special meeting.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes

of the meeting, is to consider the proposed issuance of common stock or membership, or subscriptions for common stock or membership, or both, as consideration for all or a part of the property and assets of the other cooperative association.

3. At the meeting the membership may authorize the issuance and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the property and assets to be received as consideration. Such authorization shall be approved if a majority of the voting members present vote in the affirmative.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the issuance, without further action or approval by the members.

If a cooperative association, in connection with its acquisition of property or assets of another cooperative association, agrees to solicit common stock or membership, or subscriptions for common stock or membership to the members of the cooperative association selling such property or assets, the agreement shall not itself constitute the issuance of common stock or membership, or subscriptions for common stock or membership as described in this section. This section shall not apply to a merger as defined in section 499.61.

87 Acts, ch 88, §3 HF 356
NEW section

499.59 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §8 SF 471
NEW section

499.61 Definitions.

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

1. "*Merger*" means the uniting of two or more co-operative associations into one co-operative association, in such manner that one of the merging associations retains its corporate existence and absorbs the others, which cease to exist as corporate entities. "*Merger*" does not include the acquisition, by purchase or otherwise, of the assets of one co-operative association by another, unless the acquisition only becomes effective by the filing of articles of merger by the associations and the issuance of a certificate of merger pursuant to sections 499.67 and 499.68.

2. "*Consolidation*" means the uniting of two or more co-operative associations into one co-operative association, in such manner that a new co-operative association is formed, and the new co-operative association absorbs the others, which cease to exist as separate entities.

3. "*Surviving association*" is the co-operative association resulting from the merger of two or more co-operative associations.

4. "*New association*" is the co-operative association resulting from the consolidation of two or more co-operative associations.

87 Acts, ch 88, §4 HF 356
Subsection 1 amended

499.66 Value determined.

1. As used in this section:

a. "*Dissenting member*" means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 499.65.

b. "*Old association*" means the association in which the member owns or owned a membership.

c. "*New association*" means the surviving or new association after the merger or consolidation.

d. "*Issue price*" means the amount paid for an interest in the old association or the amount stated in a notice of allocation of patronage dividends.

e. "*Fair market value*" means the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell.

2. Within twenty days after the merger or consolidation is effected, the new association shall make a written offer to each dissenting member to pay a specified sum deemed by the new association to be the fair value of that dissenting member's interest in the old association. This offer shall be accompanied by a balance sheet of the old association as of the latest available date, a profit and loss statement of the old association for the twelve-month period ending on the date of this balance sheet, and a list of the dissenting member's interests in the old association. If the dissenting member does not agree that the sum stated in this notice represents the fair value of the member's interest, then the member may file a written objection with the new association within twenty days after receiving this notice. A dissenting member who fails to file this objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

If the surviving or new association receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the new association shall file a petition in the Iowa district court asking for a finding and determination of the fair value of each type of equity. The action shall be prosecuted as an equitable action.

The fair value of a dissenting member's interest in the old association shall be determined as of the day preceding the merger or consolidation by taking the lesser of either the issue price of the dissenting member's membership, common stock, deferred patronage dividends, and preferred stock, or the amount determined by subtracting the old association's debts from the fair market value of the old association's assets, dividing the remainder by the total issue price of all memberships, common stock, preferred stock, and revolving funds, and then multiplying the quotient from this division by the total issue price of a dissenting member's membership, common stock, preferred stock, and revolving fund interest.

3. The new association shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that member's interest in the old association. The new association shall pay the remainder of each dissenting member's fair value at the same time other payments of deferred patronage dividends or redemption of preferred stock are made, but in any event within fifteen years after the merger or consolidation. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the person's fair value paid with the same priority as if the person was a member at the time of death.

CHAPTER 502

IOWA UNIFORM SECURITIES ACT

(Blue Sky Law)

502.102 Definitions.

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

1. "Administrator" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

a. Effecting transactions in a security exempted by section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, or 17, or a security issued by an industrial loan company licensed under chapter 536A;

b. Effecting transactions exempted by section 502.203; or

c. Effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

"Agent" also does not include other individuals who are not within the intent of this subsection whom the administrator by rule or order designates. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

3. An "affiliate" of, or a person "affiliated" with, a specified person, means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

4. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include:

a. An agent;

b. An issuer;

c. An institutional investor, including an insurance company or bank, except where the insurance company or bank is engaged in the business of selling interests (other than through a subsidiary) in a separate account that are securities;

d. A person who has no place of business in this state if such person:

(1) Effects transactions in this state exclusively with or through the issuers of the securities involved in the transaction; other broker-dealers; or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(2) During any period of twelve consecutive months does not effect transactions in this state in any manner with more than three persons other than those specified in subparagraph (1) of this paragraph, whether or not the offeror or any of the offerees is then present in this state;

e. Other persons not within the intent of this subsection whom the administrator by rule or order designates.

5. "Fraud", "deceit" and "defraud" are not limited to common law deceit.

6. "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

7. "Issuer" means any person who issues or proposes to issue any security, except that

a. With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

b. With respect to certificates of interest or participation in oil, gas or mining titles or leases, or in payments out of production under such titles or leases, there is not considered to be any "issuer".

8. "Nonissuer" means not directly or indirectly for the benefit of the issuer.

9. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

10. a. "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition or exchange of, a security or interest in a security for value.

b. "Offer" or "offer to sell" includes every attempt or offer to exchange or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

c. A security given or delivered with, or as a bonus on account of, a purchase of a security or any other thing is offered and sold for value as part of the subject of the purchase.

d. A purported gift of assessable stock is considered to involve an offer and sale.

e. Except to the extent that the administrator provides otherwise by rule or order, an offer or sale of a security that is convertible into or entitles its holder to acquire another security of the same or another issuer is an offer also of the other security, whether the right to convert or acquire is exercisable immediately or in the future.

f. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan; or

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

11. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Internal Revenue Code of 1954" and "Agricultural Marketing Act" mean the federal statutes of those names.

12. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include a time-share interval as defined in section 557A.2 or an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

13. "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

14. For the purposes of sections 502.211 through 502.218, unless the context otherwise requires:

a. "Associate" means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

b. "Equity security" means any stock or similar security, and includes the following:

(1) Any security convertible, with or without consideration, into a stock or similar security.

(2) Any warrant or right to subscribe to or purchase a stock of similar security.

(3) Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

(4) Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

c. "Offeror" means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

d. "Offeree" means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

e. "Takeover offer":

(1) Means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either of the following are true:

(a) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(b) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this provision does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) Does not include the following:

(a) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(b) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(c) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

f. "Target company" means an issuer of publicly traded equity securities which has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the

security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

g. "*Beneficial owner*" includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

h. "*Beneficial ownership*" includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

15. "*Interest at the legal rate*" means the interest rate for judgments specified in section 535.3.

87 Acts, ch 53, §1, 2 SF 470; 87 Acts, ch 181, §1 HF 520

Subsection 2, paragraph a amended

Subsection 11 amended

Subsections 14, 15, 16 and 17 stricken and rewritten as subsections 14 and 15

502.202 Exempt securities.

The following securities are exempted from sections 502.201 and 502.602:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or unconditionally guaranteed by a person whose securities are exempt from registration under this chapter by (a) this section, subsection 7 or 8, or (b) subsection 9 of this section, provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of this state.

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized and supervised under the laws of this state.

5. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do business in this state.

6. Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state.

7. Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is

- a. Subject to the jurisdiction of the interstate commerce commission;
- b. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; or
- c. Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

8. Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other national securities exchange registered under the Securities Exchange Act of 1934 and designated by rule of the administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

9. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association; provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

10. Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal; except where such paper is proposed to be sold or offered to the public in units of less than five thousand dollars to any single person.

11. A security issued in connection with an employee stock purchase, option, savings, pension, profit sharing or similar benefit plan, provided, in the case of plans which are not qualified under section 401 of the Internal Revenue Code of 1954 and which provide for contribution by employees, the administrator is notified in writing fifteen days before the inception of the plan of the terms of the plan.

12. A stock or similar security, including a patronage refund certificate, issued by:

a. A cooperative association as defined in the Agricultural Marketing Act, or a federation of such cooperative associations that possesses no greater powers or purposes than cooperative associations so defined, if such stock or similar security including a certificate of interest, certificate of indebtedness, or building note:

(1) Qualifies its holder for membership in the cooperative association or federation, or in the case of patronage refund certificate, is issuable only to members; and

(2) Is transferable only to the issuer or to a successor in interest of the transferor that qualifies for membership in the cooperative association or federation;

b. A cooperative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code of 1954, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto; or

c. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, and 499, that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer;

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization; and

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

13. Any security issued in exchange for any issued and outstanding security of a cooperative association, as defined in the Agricultural Marketing Act, or a federation of such cooperatives which possess no greater powers or purposes than cooperative associations so defined, if such exchange is a part of a merger or consolidation of two or more such cooperative associations.

14. Any security issued by a corporation formed under chapter 496B.

15. Any security issued by the agricultural development authority under chapter 175.

16. Any security representing a thrift certificate of an industrial loan company which is a member of the industrial loan thrift guaranty corporation of Iowa.

17. Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

87 Acts, ch 181, §2 HF 520
NEW subsection 17

502.211 Registration requirements—hearing.

1. It is unlawful for a person to make a takeover offer or to acquire any equity securities pursuant to the offer unless the offer is valid under sections 502.211 through 502.218. A takeover offer is effective when the offeror files with the administrator a registration statement containing the information prescribed in subsection 6. Not later than the date of filing of the registration statement, the offeror shall deliver a copy of the registration statement by certified mail to the target company at its principal office and publicly disclose the material terms of the proposed offer. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security.

2. The registration statement shall be filed on forms prescribed by the administrator, and shall be accompanied by a consent by the offeror to service of process and filing fee specified in section 502.216, and contain the following information:

a. All information specified in subsection 6.

b. Two copies of all solicitation materials intended to be used in the takeover offer, and in the form proposed to be published, sent, or delivered to offerees.

c. Additional information as prescribed by the administrator by rule, pursuant to chapter 17A, prior to the making of the offer.

3. Registration shall not be considered approval by the administrator, and any representation to the contrary is unlawful.

4. Within three calendar days of the date of filing of the registration statement, the administrator may, by order, summarily suspend the effectiveness of the takeover offer if the administrator determines that the registration does not contain all of the information specified in subsection 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection 5.

5. A hearing shall be scheduled by the administrator for each suspension under this section, and the hearing shall be held within ten calendar days of the date of the suspension. The administrator's determination following the hearing shall be made within three calendar days after the hearing has been completed,

but not more than sixteen days after the date of the suspension. The administrator may prescribe different time periods than those specified in the subsection by rule or order.

If, based upon the hearing, the administrator finds that the registration statement fails to provide for full and fair disclosure of all material information concerning the offer, or that the takeover is in violation of any of the provisions of section 502.211 through 502.218, the administrator shall permanently suspend the effectiveness of the takeover offer, subject to the right of the offeror to correct disclosure and other deficiencies identified by the administrator and to reinstate the takeover offer by filing a new or amended registration statement pursuant to this section.

6. The form required to be filed by subsection 2, paragraph "a", shall contain all of the following information:

a. The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected.

b. The source and amount of funds or other consideration used or to be used in acquiring any equity security including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the target company and, if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements and the names of the parties from whom the funds were or are to be borrowed.

c. If the offeror is other than a natural person, information concerning its organization and operations, including the year, form and jurisdiction of its organization, a description of each class of equity security and long-term debt, a description of the business conducted by the offeror and its subsidiaries and any material changes in the offeror or subsidiaries during the past three years, a description of the location and character of the principal properties of the offeror and its subsidiaries, a description of any pending and material legal or administrative proceedings in which the offeror or any of its affiliates is a party, the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past five years, and financial statements of the offeror in a form and for periods of time as the administrator may, pursuant to chapter 17A and prior to the making of the offer, prescribe.

d. If the offeror is a natural person, information concerning the offeror's identity and background, including business activities and affiliations during the past five years and a description of any pending and material legal or administrative proceedings in which the offeror is a party.

e. If the purpose of the acquisition is to gain control of the target company, the material terms of any plans or proposals which the offeror has, upon gaining control, to liquidate the target company, sell its assets, effect its merger or consolidation, change the location of its principal executive office or of a material portion of its business activities, change its management or policies of employment, materially alter its relationship with suppliers or customers or the community in which it operates, or make any other major changes in its business, corporate structure, management or personnel, and other information which would materially affect the shareholders' evaluation of the acquisition.

f. The number of shares or units of any equity security of the target company owned beneficially by the offeror and any affiliate or associate of the offeror, together with the name and address of each affiliate or associate.

g. The material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the target company by which the offeror has or will acquire any interest in additional equity securities of the target company, or is or will be obligated to transfer any interest in the equity securities to another.

h. Information required to be included in a tender offer statement pursuant to section 14(d) of the Securities Exchange Act of 1934 and the rules and regulations of the securities and exchange commission issued pursuant to the Act.

87 Acts, ch 53, §3 SF 470
Section stricken and rewritten

502.212 Filing of solicitation materials.

Copies of all advertisements, circulars, letters, or other materials disseminated by the offeror or the target company, soliciting or requesting the acceptance or rejection of a takeover offer shall be filed with the administrator and sent to the target company or offeror not later than the time the solicitation or request materials are first published, sent, or given to the offerees. The administrator may prohibit the use of any materials deemed false or misleading.

87 Acts, ch 53, §4 SF 470
Section stricken and rewritten

502.213 Fraudulent, deceptive or manipulative acts and practices prohibited.

It is unlawful for an offeror, target company, affiliate or associate of an offeror or target company, or broker-dealer acting on behalf of an offeror or target company to engage in a fraudulent, deceptive, or manipulative act or practice in connection with a takeover offer. For purposes of this section, an unlawful act or practice includes, but is not limited to, the following:

1. The publication or use in connection with a takeover offer of a false statement of a material fact, or the omission of a material fact which renders the statements made misleading.

2. The purchase of any of the equity securities of an officer, director, or beneficial owner of five percent or more of the equity securities of the target company by the offeror or the target company for a consideration greater than that to be paid to other shareholders, unless the terms of the purchase are disclosed in a registration statement filed pursuant to section 502.211.

3. The refusal by a target company to permit an offeror who is a shareholder of record to examine or copy its list of shareholders, pursuant to the applicable corporation statutes, for the purpose of making a takeover offer.

4. The refusal by a target company to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of the materials, together with the reasonable expenses of postage and handling.

5. The solicitation of any offeree for acceptance or rejection of a takeover offer, or acquisition of any equity security pursuant to a takeover offer, when the offer is suspended under section 502.211, provided, however, that the target company may communicate during a suspension with its equity security holders to the extent required to respond to the takeover offer made pursuant to the Securities Exchange Act of 1934.

87 Acts, ch 53, §5 SF 470
Section stricken and rewritten

502.214 Limitations on offers and offerors.

1. A takeover offer shall contain substantially the same terms for shareholders residing within and outside this state.

2. An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of an offeree within seven days after the date the offer has become effective and after sixty days from the date the offer has become effective, or as otherwise determined by the administrator pursuant to a rule or order issued for the protection of the shareholders.

3. If an offeror makes a takeover offer for less than all the outstanding equity securities of any class and, within ten days after the offer has become effective and

copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to equity security holders, the number of securities deposited or tendered pursuant to the offer is greater than the number of securities that the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered for each offeree.

4. If an offeror varies the terms of a takeover offer before the offer's expiration date by increasing the consideration offered to equity security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether the securities have been accepted by the offeror before or after the variation in the terms of the offer.

5. An offeror shall not make a takeover offer or acquire any equity securities in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

6. An offeror shall not acquire, remove, or exercise control, directly or indirectly, over any target company assets located in this state pursuant to a takeover offer during the period of time that an administrator's proceeding alleging a violation of this chapter is pending against the offeror.

7. An offeror shall not acquire from a resident of this state an equity security of any class of a target company at any time within two years following the last purchase of securities pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the holders of the equity securities are afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

87 Acts, ch 53, §6 SF 470
Section stricken and rewritten

502.215 Administration—rules and orders.

1. The administrator shall make and adopt rules and forms as the administrator determines are necessary to carry out the purposes of sections 502.211 through 502.218.

2. The administrator may by rule or order exempt from any provision of sections 502.211 through 502.218 the following:

a. A proposed takeover offer or a category or type of takeover offer which the administrator determines does not have the purpose or effect of changing or influencing the control of a target company.

b. A proposed takeover offer for which the administrator determines that compliance with the sections is not necessary for the protection of the offerees.

c. A person from the requirement of filing statements.

3. In the event of a conflict between the provisions of chapter 17A. and the provisions of sections 502.211 through 502.218, the provisions of sections 502.211 through 502.218 shall prevail.

87 Acts, ch 53, §7 SF 470
Section stricken and rewritten

502.216 Fees.

The administrator shall charge a nonrefundable filing fee of two hundred fifty dollars for a registration statement filed by an offeror.

87 Acts, ch 53, §8 SF 470
NEW section

502.217 Nonapplication of corporate takeover law.

If the target company is a public utility, public utility holding company, national banking association, bank holding company, or savings and loan associ-

ation which is subject to regulation by a federal agency and the takeover of such company is subject to approval by the federal agency, sections 502.211 through 502.218 do not apply.

87 Acts, ch 53, §9 SF 470
NEW section

502.218 Application of securities law.

All of the provisions of this chapter which are not in conflict with sections 502.211 through 502.218, apply to any takeover offer involving a target company.

87 Acts, ch 53, §10 SF 470
NEW section

502.407 Misstatements in publicity prohibited.

It is unlawful for any person to make or cause to be made, in any public report or press release, or in other information which is either made generally available to the public or used in opposition to a tender offer, any statement of a material fact relating to a target company or made in connection with a tender offer which is, at the time and in the light of the circumstances under which it is made, false or misleading, if it is reasonably foreseeable that such statement will induce other persons to buy, sell or hold securities of the target company.

87 Acts, ch 53, §11 SF 470
Section amended

502.501 Violation of registration and related requirements.

1. Any person who:
 - a. Violates section 502.201, section 502.208, subsection 12 or section 502.406, subsection 2, paragraph "b", or
 - b. Violates any material condition imposed under section 502.208, or
 - c. Offers or sells a security at any time when such person has committed a material violation of section 502.301, or
 - d. Commits a material violation of any order issued by the administrator under this chapter, shall be liable to the person purchasing the security offered or sold in connection with such violation, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less
 - (1) The value of the security when the purchaser disposed of it and
 - (2) Interest on said value at the legal rate from the date of disposition. Any person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this section, but in no event shall any underwriter be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2. Any person who violates section 502.211 shall be liable to the person selling the security to such violator, which seller may sue either at law or in equity to recover the security, costs and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of

willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

3. In addition to other remedies provided in this chapter, in a proceeding alleging a violation of sections 502.211 through 502.218 the court may provide that all shares acquired from a resident of this state in violation of any provision of this chapter or rule or order issued pursuant to this chapter be denied voting rights for one year after acquisition, that the shares be nontransferable on the books of the target company, or that during this one-year period the target company have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption, which redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

87 Acts, ch 53, §12 SF 470
NEW subsection 3

CHAPTER 503

MEMBERSHIP SALES

503.3 Nonapplicability.

This chapter shall not apply to any of the following:

1. A corporation or association organized upon the assessment plan for the purpose of insuring the lives of individuals or furnishing benefits to the widows, heirs, orphans or legatees of deceased members.
2. A benevolent association or society.
3. An association which sells or offers for sale memberships to an individual or to a family unit for consideration which is fifty dollars or less for a one-year period.
4. An association which sells membership camping contracts which are registered or exempt under chapter 557B.

87 Acts, ch 181, §3 HF 520
NEW subsection 4

CHAPTER 504

CORPORATIONS NOT FOR PECUNIARY PROFIT

504.17 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §9 SF 471
NEW section

CHAPTER 504A

IOWA NONPROFIT CORPORATION ACT

504A.4 General powers.

Each corporation, unless otherwise stated in its articles of incorporation, shall have power:

1. To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
2. To sue and be sued, complain and defend, in its corporate name.
3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
4. To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
6. To lend money to its employees other than its officers and directors, and otherwise assist its employees, officers and directors.
7. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.
8. To make contracts and guaranties and incur liabilities, borrow money at such lawful rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income, and to guarantee the obligations of other persons.
9. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
10. To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.
11. To elect or appoint officers and agents of the corporation who may be directors or members, and define their duties and fix their compensation, and to pay pensions and establish pension plans, pension trusts, and other incentive, insurance and welfare plans for any or all of its directors, officers and employees.
12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.
13. Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, eleemosynary, benevolent, scientific or educational purposes; and in time of war to make donations in aid of war activities.
14. A corporation operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in section 496A.4A.
15. To cease its corporate activities and surrender its corporate franchise.
16. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

87 Acts, ch 212, §10 SF 471
 Subsection 14 stricken and rewritten

504A.101 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts nor obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the

corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

87 Acts, ch 212, §11 SF 471
Section stricken and rewritten

CHAPTER 505

INSURANCE DIVISION

505.7 Fees—expenses of division.

All fees and charges which are required by law to be paid by insurance companies and associations shall be payable to the commissioner of the insurance division of the department of commerce or department of revenue and finance, as provided by law, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner provided by law. However, fees paid for the inspection or examination of an insurer or other entity subject to regulation by the insurance division shall be deposited in an insurance revolving fund. The treasurer of state shall hold these funds in an account that shall be established in the name of the commissioner for the payment of the expenses of the division upon appropriation by the general assembly. This fund is subject at all times to the warrant of the department of revenue and finance, drawn upon written requisition of the commissioner or the commissioner's designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the insurance division. The commissioner may keep on hand with the treasurer of state funds in excess of the current needs of the division. Transfers shall not be made from the general fund of the state or any other fund for the payment of the expenses of the division. No part of the funds held by the treasurer of state for the account of the commissioner shall be transferred to the general fund of the state or any other fund. The funds held by the treasurer of state for the account of the commissioner shall be invested by the treasurer of state and the income derived from these investments shall be credited to the general fund of the state.

The commissioner shall account for receipts and disbursements according to the separate inspection and examination duties imposed upon the commissioner by the laws of this state and each separate inspection and examination duty shall be fiscally self-sustaining.

87 Acts, ch 234, §433 HF 671
Section amended

505.13 Other insurance—reports by the division.

1. The commissioner shall annually cause the preparation and printing of a report to be delivered to the governor. The report shall contain information from the statements required of insurance companies, other than life insurance companies, organized or doing business in the state. The reports shall be delivered on or before the first day of August each year.

2. The commissioner shall semiannually cause the preparation and printing of a report to be delivered to the general assembly on or before the thirty-first day of July and the thirty-first day of December each year. The report shall contain information on the state of the insurance business and any impending problems foreseen by the commissioner which would affect the insurance business conducted in the state or the regulation of that insurance business by the division.

87 Acts, ch 132, §1 HF 506
Section stricken and rewritten

505.15 Actuarial staff.

The commissioner may appoint a staff of actuaries as necessary to carry out the duties of the division. The actuarial staff shall:

1. Perform analyses of rate filings.
2. Perform audits of submitted loss data.
3. Conduct rate hearings and serve as expert witnesses.
4. Prepare, review, and dispense data on the insurance business.
5. Assist in public education concerning the insurance business.
6. Identify any impending problem areas in the insurance business.
7. Assist in examinations of insurance companies.

87 Acts, ch 132, §2 HF 506
NEW section

CHAPTER 507B

INSURANCE TRADE PRACTICES

507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

i. Misrepresents any insurance policy to consumers by using the terms "burial insurance", "funeral insurance", "burial plan", or "funeral plan" in its names or titles, unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance company. This paragraph does not prevent insurers from stating or advertising that insurance benefits may provide cash for funeral or burial expenses.

2. *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive or misleading.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular,

article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False statements and entries.*

a. Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

b. Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.*

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

8. *Rebates.*

a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

b. Nothing in subsection 7 or paragraph "a" of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured.

j. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

l. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

m. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

10. *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

11. *Rating organizations.* Any violation of section 515A.16.

12. *Minor traffic violations.* Failure of a person to comply with section 516B.3.

87 Acts, ch 65, §2 SF 267; 87 Acts, ch 120, §7 SF 311

1980 amendment affirmed and reenacted effective April 29, 1987; legislative findings; 87 Acts, ch 65, §1, 2 SF 267

Subsection 12 effective May 12, 1987

NEW subsection 12

CHAPTER 507C

INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION ACT

507C.20 Dissolution or sale of insurer.

The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time the commissioner applies for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent. However, dissolution may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason. Notwithstanding the above, upon application by the commissioner and following notice as prescribed by the court and a hearing, the court may sell the corporation as an entity, together with any of its licenses to do business, despite the entry of an order of liquidation. The sale may be made on terms and conditions the court deems appropriate including, but not limited to, the placing of the proceeds of the sale of the corporate entity and licenses into a trust for the benefit of policyholders and creditors with proceeds to be distributed in the manner set forth in section 507C.42.

87 Acts, ch 168, §1 HF 170

Section amended

CHAPTER 507D

INSURANCE ASSISTANCE ACT

507D.3 Authorized assistance programs.

The commissioner of insurance is authorized to institute programs, order the institution of programs within the private sector, or to contract with or delegate authority to the risk management division of the department of general services for the institution of programs relating to insurance assistance including, but not limited to, the following:

1. The development and implementation of a market assistance program to facilitate, arrange, or provide for the acquisition of property, casualty, product, professional, or other liability insurance coverage for all persons or entities seeking such coverage but for which the coverage is presently unavailable or unobtainable to the person or entity.

2. The development and implementation of a mandatory risk allocation system for property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, in order to assure that all persons or entities for which such insurance is essential may obtain such insurance from insurers authorized to do business within this state.

3. The development and implementation of a risk-sharing program to assist and advise persons or entities seeking property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, on the most efficient manner in which to share or pool similar risks in order to obtain essential insurance coverage at the minimum cost.

4. The development and implementation of a risk management program for persons or entities to which property, casualty, product, professional, or other liability insurance is essential, such program to include at a minimum the following:

a. Assistance in developing and maintaining loss and loss exposure data on such liability risks.

b. Recommendations regarding risk reduction and risk elimination programs.

c. Recommendations of those practices which will permit protection against such losses at the lowest costs, consistent with good underwriting practices and sound risk management techniques.

5. Subsections 2 and 3 shall have no application or effect after July 1, 1991.

6. An assistance program for the facilitation of insurance and financial responsibility coverage for owners and operators of underground storage tanks which store petroleum shall not be affected by the prohibitions of subsections 2 and 3.

87 Acts, ch 225, §601 HF 631
Plan of operations program to develop funds to satisfy federal financial responsibility requirements for owners of underground petroleum storage tanks; 87 Acts, ch 225, §602, 603 HF 631
NEW subsection 6

CHAPTER 508C

IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

508C.1 Title.

This chapter shall be cited as the "*Iowa Life and Health Insurance Guaranty Association Act*".

87 Acts, ch 223, §1 HF 661
NEW section

508C.2 Purpose.

1. The purpose of this chapter is to protect, subject to certain limitations, the persons specified in section 508C.3, subsection 1, against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts specified in section 508C.3, subsection 2, because of the impairment or insolvency of the member insurer which issued the policies or contracts.

2. To provide this protection, an association of insurers is created to enable the guaranty of payments of benefits and of continuation of coverages as limited in this chapter. Members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

87 Acts, ch 223, §2 HF 661
NEW section

508C.3 Scope.

1. This chapter shall provide coverage under the policies and contracts specified in subsection 2 to all of the following:

a. Except for nonresident certificate holders under group policies or contracts, persons who are the beneficiaries, assignees, or payees of the persons covered under paragraph "b".

b. Persons who are owners of the policies or contracts specified in subsection 2, or are insureds or annuitants under the policies or contracts, and who are either of the following:

(1) Residents of this state.

(2) Nonresidents of this state if all of the following conditions are met:

(a) The state in which the person resides has an association similar to the association created in this chapter.

(b) The person is not eligible for coverage by an association described in subparagraph part (a).

(c) The insurer which issued the policy or contract never held a license or certificate of authority in the state in which the person resides.

(d) The insurer is domiciled in this state.

2. This chapter shall provide coverage to the persons specified in subsection 1 under direct life insurance policies, health insurance policies, annuity contracts, supplemental contracts, and certificates under group policies or contracts issued by member insurers.

3. This chapter does not apply to:

a. Any portion of a life, health, or annuity benefit payment liability arising on or after the date of insolvency to the extent that it is based upon a rate of interest which exceeds the lesser of the following:

(1) The minimum rate of interest guaranteed under the policy or contract.

(2) The rate of interest calculated as prescribed in the standard valuation law of this state for determining the minimum standard for the valuation of life insurance policies issued during the year of insolvency which have an interest-guaranteed duration of ten or fewer years.

b. That portion or part of a policy or contract under which the risk is borne by the policyholder.

c. A policy or contract or part of a policy or contract assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

d. With respect to annuities, a benefit payment liability under a policy or contract which is not subject to standard nonforfeiture law, not annuitized, and does not provide annuity purchase rates contractually guaranteed for ten or more years.

e. A policy or contract issued by a company which is licensed under chapter 509A, 510, 512, 512A, 514, 514B, 518, 518A, or 520.

f. Except for a policy issued pursuant to section 515.48, subsection 5, paragraph "a", a policy or contract issued by a company which is licensed under chapter 515.

g. An insurer which was placed under an order of liquidation, rehabilitation, or conservation by a court prior to July 1, 1987, is not an impaired insurer or an insolvent insurer for the purposes of this chapter.

87 Acts, ch 223, §3 HF 661

NEW section

508C.4 Construction.

This chapter shall be liberally construed to effect its purpose as provided under section 508C.2.

87 Acts, ch 223, §4 HF 661

NEW section

508C.5 Definitions.

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

1. "Account" means any of the three accounts created under section 508C.6.

2. "Association" means the Iowa life and health insurance guaranty association created in section 508C.6.

3. "Commissioner" means the commissioner of insurance.

4. "Contractual obligation" means an obligation under a covered policy.

5. "Covered policy" means a policy or contract within the scope of this chapter as provided under section 508C.3.

6. "Impaired insurer" means a member insurer domiciled in this state which, after July 1, 1987, is either of the following:

a. Deemed by the commissioner to be potentially unable to fulfill its contractual obligations but is not an insolvent insurer.

b. Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

7. "*Insolvent insurer*" means a member insurer which after July 1, 1987, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction.

8. "*Member insurer*" means a person licensed or who holds a certificate of authority to transact in this state any kind of insurance to which this chapter applies under section 508C.3, including a person whose license or certificate of authority has been suspended, revoked, not renewed, or voluntarily withdrawn.

9. "*Person*" means an individual, corporation, partnership, association, or voluntary organization.

10. "*Premiums*" means direct gross insurance premiums and annuity considerations received on covered policies, less return insurance premiums and annuity considerations and dividends paid or credited to policyholders on the direct business. "*Premiums*" do not include premiums and considerations on contracts between insurers and reinsurers, or amounts received and held by a member insurer in an account or fund unless and until the amounts are applied by the member insurer to the purchase of an annuity or other benefit for a specific person.

11. "*Resident*" means a person who resides in this state, or if a corporation has its principal place of business in this state, at the time a member insurer is determined to be an impaired or insolvent insurer, and to whom contractual obligations are owed.

12. "*Supplemental contract*" means an agreement entered into for the distribution of policy or contract proceeds.

87 Acts, ch 223, §5 HF 661
NEW section

508C.6 Creation of the association.

1. A nonprofit legal entity is created to be known as the Iowa life and health insurance guaranty association. All member insurers shall be and shall remain members of the association as a condition of their authority to transact insurance business in this state. The association shall perform its functions under the plan of operation established and approved under section 508C.10 and shall exercise its powers through the board of directors established in section 508C.7. For purposes of administration and assessment, the association shall maintain all of the following accounts:

- a. A health insurance account.
- b. A life insurance account.
- c. An annuity account.

2. The association is subject to the immediate supervision of the commissioner and the applicable provisions of the insurance laws of this state.

87 Acts, ch 223, §6 HF 661
NEW section

508C.7 Board of directors.

1. The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers, subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer is entitled to one vote in person or by proxy. If the board of directors is not selected

within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

2. In approving selections or in appointing members to the board, the commissioner shall consider, among other factors, whether all member insurers are fairly represented.

3. At the option of the association, members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. However, members of the board shall not otherwise be compensated by the association for their services.

87 Acts, ch 223, §7 HF 661
NEW section

508C.8 Powers and duties of the association.

1. If a domestic insurer is an impaired insurer, the association, subject to conditions imposed by the association and approved by the impaired insurer and the commissioner, may:

a. Guarantee, assume, reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer.

b. Provide moneys, pledges, notes, guarantees, or other means as proper to effectuate paragraph "a" and assure payment of the contractual obligations of the impaired insurer pending action under paragraph "a".

c. Loan money to the impaired insurer and guarantee borrowings by the impaired insurer, provided the association has concluded, based on reasonable assumptions, that there is a likelihood of repayment of the loan and a probability that unless a loan is made the association would incur substantial liabilities under subsection 2.

2. If a domestic, foreign, or alien insurer is an insolvent insurer, subject to the approval of the commissioner the association shall:

a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer.

b. Assure payment of the contractual obligations of the insolvent insurer.

c. Provide moneys, pledges, notes, guarantees, or other means as reasonably necessary to discharge the duties described in this subsection.

3. a. In carrying out its duties under subsection 2, permanent policy liens or contract liens may be imposed in connection with a guarantee, assumption, or reinsurance agreement, if the court does both of the following:

(1) Finds either that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to the public interest to justify the imposition of policy or contract liens.

(2) Approves the specific policy liens or contract liens to be used.

b. Before being obligated under subsection 2, the association may request the imposition of a temporary moratorium, not exceeding three years, or liens on payments of cash values, termination values, and policy loans in addition to any contractual provisions for deferral of cash values, termination values, or policy loans. The temporary moratoriums and liens may be imposed by the court as a condition of the association's liability with respect to the insolvent insurer.

c. The obligations of the association under subsection 2 regarding a covered policy shall be reduced to the extent that the person entitled to the obligations has received payment of all or any part of the contractual benefits payable under the covered policy from any other source.

d. The association may offer modifications to the owners of policies or contracts or classes of policies or contracts issued by the insolvent insurer, if the association finds that under the policies or contracts the benefits provided, provisions pertaining to renewal, or the premiums charged or which may be charged are not reasonable. If the owner of a policy or contract to be modified fails or refuses to

accept the modification as approved by the court, the association may terminate the policy or contract as of a date not less than one hundred eighty days after the modification is sent to the owner. The association shall have no liability under the policy or contract for any claim incurred or continuing beyond the termination date.

4. If the association fails to act within a reasonable period of time as provided in subsection 2, the commissioner shall have the powers and duties of the association under this chapter with respect to insolvent insurers.

5. Upon request the association may give assistance and advice to the commissioner concerning the rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

6. The association has standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. Standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

7. *a.* A person receiving benefits under this chapter is deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received under this chapter, whether the benefits are payments of contractual obligations or a continuation of coverage. The association may require an assignment to the association of the rights by a payee, policyholder or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon the person. The association shall be subrogated to these rights against the assets of the insolvent insurer.

b. The subrogation rights of the association under this subsection have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

c. In addition to the rights pursuant to subsection 3, paragraphs "a" and "b", the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the insolvent insurer or holder of a policy or contract.

8. The contractual obligations of the insolvent insurer, for which the association becomes or may become liable, are as great as but not greater than the contractual obligations of the insolvent insurer would have been in the absence of an insolvency, unless the obligations are reduced as permitted in this chapter. However, with respect to any one life, the aggregate liability of the association shall not exceed one hundred thousand dollars in cash and termination values, or three hundred thousand dollars for all benefits, including cash and termination values, death benefits, annuity payments, accident and health benefits, and all other amounts payable under all policies or contracts of the insolvent insurer.

9. The association has no obligation for either of the following:

a. To continue coverage, or to pay a claim for benefits to any person under an individual accident, health, or disability policy accruing more than three years following the date the member insurer is adjudicated to be insolvent.

b. To issue a group conversion policy of any nature to a person or to continue a group coverage in force for more than sixty days following the date the member insurer was adjudicated to be insolvent.

10. The association may do any of the following:

a. Enter into contracts as necessary or proper to carry out this chapter.

b. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 508C.9.

c. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association held by domestic insurers and not in default qualify as investments eligible for deposit under section 511.8, subsection 16.

d. Employ or retain persons as necessary to handle the financial transactions of the association, and to perform other functions as necessary or proper under this chapter.

e. Negotiate and contract with a liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

f. Take legal action as necessary to avoid payment of improper claims.

g. For the purposes of this chapter and to the extent approved by the commissioner, exercise the powers of a domestic life or health insurer. However, the association shall not issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

h. Join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

87 Acts, ch 223, §8 HF 661
NEW section

508C.9 Assessments.

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account established pursuant to section 508C.6, at the time and for the amounts the board finds necessary. An assessment is due not less than thirty days after prior written notice has been sent to the member insurers and accrues interest at ten percent per annum commencing on the due date.

2. There are two classes of assessments as follows:

a. Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses and examinations conducted under section 508C.12, subsection 5, not related to a particular impaired or insolvent insurer.

b. Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 508C.8 with regard to an impaired domestic insurer or an insolvent domestic, foreign, or alien insurer.

3. a. The amount of a class A assessment shall be determined by the board and to the extent that class A assessments do not exceed one hundred dollars per company in any one calendar year may be made on a per capita basis. The assessment shall be credited against future insolvency assessments. The amount of a class B assessment shall be allocated for assessment purposes among the accounts as the liabilities and expenses of the association, either experienced or reasonably expected, are attributable to those accounts, all as determined by the association and on an equitable basis as is reasonably practical.

b. Class A assessments in excess of one hundred dollars per company per calendar year and class B assessments against member insurers for each account shall be in the proportion that the aggregate premiums received on business in this state by each assessed member insurer on policies or contracts related to that account for the three calendar years preceding the year of impairment or insolvency, bear to the aggregate premiums received on business in this state by all assessed member insurers on policies related to that account for the three calendar years preceding the assessment.

c. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this chapter. Classification of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

4. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

5. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of the insurer's premiums received in this state during the calendar year preceding the assessment on the policies related to that account. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon as permitted by this chapter.

6. By an equitable method as established in the plan of operation, the board may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account, including assets accruing from net realized gains and income from investments, exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

7. In determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this chapter, it is proper for a member insurer to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

8. The association shall issue to each insurer paying a class B assessment under this chapter, a certificate of contribution in a form prescribed by the commissioner for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form, for the amount and for a period of time as the commissioner may approve.

87 Acts, ch 223, §9 HF 661
NEW section

508C.10 Plan of operation.

1. a. The association shall submit to the commissioner a plan of operation and any amendments to the plan of operation necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments to the plan are effective upon the commissioner's written approval.

b. If the association fails to submit a suitable plan of operation within one hundred eighty days following July 1, 1987, or if at any time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt rules pursuant to chapter 17A as necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. All member insurers shall comply with the plan of operation.

3. In addition to other requirements established in this chapter the plan of operation shall establish all of the following:

a. Procedures for handling the assets of the association.

b. The amount and method of reimbursing members of the board of directors under section 508C.7.

c. Regular places and times for meetings of the board of directors.

d. Procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

e. Procedures for selecting the board of directors and submitting the selections to the commissioner.

f. Any additional procedures for assessments under section 508C.9.

g. Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that any powers and duties of the association, except those under section 508C.8, subsection 10, paragraph "c" and section 508C.9 are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner. The delegation shall be made only to a corporation, association, or organization which extends protection at least as favorable and effective as that provided by this chapter.

87 Acts, ch 223, §10 HF 661
NEW section

508C.11 Duties and powers of the commissioner.

1. The commissioner shall:

a. Upon request of the board of directors, provide the association with a statement of the premiums for each member insurer.

b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this chapter.

c. In a liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

2. After notice and hearing, the commissioner may suspend or revoke the certificate of authority to transact insurance in this state of a member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy an administrative penalty on any member insurer which fails to pay an assessment when due. The administrative penalty shall not exceed five percent of the unpaid assessment per month. However, an administrative penalty shall not be less than one hundred dollars per month.

3. An action of the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken within thirty days of the action being appealed. A final action or order of the commissioner is subject to judicial review pursuant to chapter 17A in a court of competent jurisdiction.

4. The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter.

87 Acts, ch 223, §11 HF 661
NEW section

508C.12 Prevention of insolvencies.

1. To aid in the detection and prevention of insurer insolvencies or impairments the commissioner shall:

a. Notify the commissioners or insurance departments of other states or territories of the United States and the District of Columbia when any of the following actions against a member insurer is taken:

(1) A license is revoked.

(2) A license is suspended.

(3) A formal order is made that a company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

Notice shall be mailed to the commissioners or departments within thirty days following the earlier of when the action was taken or the date on which the action occurs. This subparagraph does not supersede section 507C.9, subsection 5.

b. Report to the board of directors when the commissioner has taken any of the actions set forth in paragraph "a" or has received a report from any other commissioner indicating that any such action has been taken in another state. Reports to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

c. Report to the board of directors when there is reasonable cause to believe from an examination, whether completed or in process, of a member company that the company may be an impaired or insolvent insurer.

d. Furnish to the board of directors the national association of insurance commissioners' early warning tests. The board may use the information in carrying out its duties and responsibilities under this section. The report and the information contained in the report shall be kept confidential by the board of directors until such time as it is made public by the commissioner or other lawful authority.

2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.

3. The board of directors may upon majority vote make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of a member insurer or germane to the solvency of a company seeking to transact insurance business in this state. These reports and recommendations are not public records pursuant to chapter 22.

4. Upon majority vote, the board of directors shall notify the commissioner of any information indicating that a member insurer may be an impaired or insolvent insurer.

5. Upon majority vote, the board of directors may request that the commissioner order an examination of a member insurer which the board in good faith believes may be an impaired or insolvent insurer. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. The examination report shall not be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 1. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it is not a public record pursuant to chapter 22 until the release of the examination report to the public.

6. Upon majority vote, the board of directors may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

7. At the conclusion of an insurer insolvency in which the association was obligated to pay covered claims, the board of directors shall prepare a report to the commissioner containing information as the board may have in its possession

bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by other associations.

87 Acts, ch 223, §12 HF 661
NEW section

508C.13 Miscellaneous provisions.

1. This chapter does not reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability other than the plan of this chapter.

2. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 508C.8. Records of the negotiations or meetings shall be made public pursuant to chapter 22 only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under section 508C.14.

3. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled pursuant to its subrogation rights under section 508C.8, subsection 7. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. As used in this subsection, "*assets attributable to covered policies*" means that proportion of the assets which the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

4. a. Prior to the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, similar associations of other states, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. When considering the contributions, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

b. A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until the total amount of valid claims of the association and of similar associations of other states for funds expended in carrying out its powers and duties under section 508C.8 with respect to the insurer have been fully recovered by the association and the similar associations.

5. a. Subject to the limitations of paragraphs "b", "c", and "d", if an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order may recover, on behalf of the insurer, from any affiliate that controlled it, the amount of distributions other than stock dividends paid by the insurer on its capital stock made at any time during the five years preceding the petition for liquidation or rehabilitation.

b. Stock dividends are not recoverable if the insurer shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

c. A person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. A person who was an affiliate that controlled the insurer at the time the distribu-

tions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two persons are liable with respect to the same distributions, they are jointly and severally liable.

d. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

e. If a person liable under paragraph "c" is insolvent, all its affiliates that controlled it at the time the dividend was paid are jointly and severally liable for a resulting deficiency in the amount recovered from the insolvent affiliate.

87 Acts, ch 223, §13 HF 661
NEW section

508C.14 Examination of the association—annual report.

The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner by May 1 of each year, a financial report for the preceding calendar year and a report of its activities during the preceding calendar year. The financial report shall be in a form approved by the commissioner.

87 Acts, ch 223, §14 HF 661
NEW section

508C.15 Tax exemptions.

The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on the association's real property.

87 Acts, ch 223, §15 HF 661
NEW section

508C.16 Immunity.

A member insurer and its agents and employees, the association and its agents and employees, members of the board of directors, and the commissioner and the commissioner's representatives are not liable for any action taken by them or omission by them while acting within the scope of their employment and in the performance of their powers and duties under this chapter.

87 Acts, ch 223, §16 HF 661
NEW section

508C.17 Stay of proceedings—reopening default judgments.

Proceedings in which the insolvent insurer is a party in a court in this state shall be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on matters germane to its powers or duties. The association may apply to have a judgment under a decision, order, verdict, or finding based on default, set aside by the same court that entered the judgment, and shall be permitted to defend against the suit on the merits.

87 Acts, ch 223, §17 HF 661
NEW section

508C.18 Prohibited advertisements.

A person, including an insurer, agent or affiliate of an insurer shall not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio station or television station, or in any other way, an advertisement, announcement, or statement which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by

this chapter. However, this section does not apply to the association or any other entity which does not sell or solicit insurance.

87 Acts, ch 223, §18 HF 661
NEW section

508C.19 Credits for assessments paid.

1. An insurer may offset an assessment made pursuant to section 508C.9 against its premium tax liability pursuant to chapter 432 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If an insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2. Sums acquired by refund from the association which have been written off by contributing insurers and offset against premium taxes as provided in subsection 1 and are not then needed for purposes of this chapter shall be paid by the association to the commissioner. The commissioner shall remit the moneys to the treasurer of state to deposit in the state general fund.

87 Acts, ch 223, §19 HF 661
NEW section

CHAPTER 509

GROUP INSURANCE

509.1 Form of policy.

No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The policy may also provide that the term "employees" shall include the board of directors if the employer is a corporation.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from

funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten employees at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

e. Group policies may include dependents of the employee, including the spouse.

f. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A.

2. A policy issued to any one of the following to be considered the policyholder:

a. An advisory, supervisory, or governing body or bodies of a regularly organized religious denomination to insure its clergy, priests, or ministers of the gospel.

b. A teachers' association, to insure its members.

c. A lawyers' association, to insure its members.

d. A volunteer fire company, to insure all of its members.

e. A fraternal society or association, or any subordinate lodge or branch thereof, to insure its members.

f. A common principal of any group of persons similarly engaged between whom there exists a contractual relationship, to insure the members of such group.

g. An association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, to insure the members thereof. For the purpose of this paragraph the students, teachers, administrators or officials of or for any such school or college shall constitute an association.

Provided that the provisions and requirements of subsection 1 of this section shall apply to such policy and the policyholder and insured in like manner as said subsection 1 of this section applies to employers and employees, except that if a policy is issued to a volunteer fire company or an association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, the requirement for twenty-five members shall not apply, and, if issued to a teachers' association or lawyers' association, not less than sixty-five percent of the members thereof may be insured.

3. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be

derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

d. The amount of insurance on the life of a debtor shall not exceed the amount owed by the debtor to the creditor, or the face amount of a totally or partially executed loan or loan commitment creating personal liability and made in good faith for general agricultural or horticultural purposes to a debtor with seasonal income. However, in no event shall the amount of insurance exceed fifty thousand dollars.

e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment. Provided that in the case of a debtor for agricultural or horticultural purposes of the type described in paragraph "d", the insurance in excess of indebtedness to the creditor, if any, shall be payable to a named beneficiary, to the estate of the debtor or under the provision of a facility of payment clause.

4. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage a member or a member's spouse or dependents on the basis of the eligibility of the member or the member's spouse or dependents for medical assistance under chapter 249A.

5. A policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions or by one or more employers and by one or more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees. The policy may also provide that the term "employees" shall include the board of directors if the employer is a corporation.

b. The premium for the policy shall be paid by the trustees wholly from funds established by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, if the funds are contributed wholly by the employer or unions.

c. The policy must cover at least one hundred persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage an employee or member or an employee's or member's spouse or dependents on the basis of the eligibility of the employee or member or employee's or member's spouse or dependents for medical assistance under chapter 249A.

6. A policy issued to any nonprofit industrial association (to be deemed the policyholder) incorporated for a period of at least ten years and organized for purposes other than obtaining insurance, subject to the following requirements:

a. If two or more members of the association, or any class or classes of members thereof determined by conditions pertaining to insurance, elect to insure their employees or any class or classes of employees determined by conditions pertaining to employment; and

b. The total number of insured employees must not be less than one thousand, and of these not less than seventy-five percent must be employees of members with at least twenty insured employees each, and further, not more than ten percent may be employees of members with less than ten insured employees each; and

c. The insurance premiums are paid by such members to the association; each member, insofar as applicable to the member's own employees, may collect part of the premium from insured employees, and the method of apportionment of the premium payment between the member and the member's employees may be varied as among individual members; and

d. Not less than seventy-five percent of the eligible employees of each participating member may be insured where the employees pay a part of the premium. The word "employees" as used in this subsection shall also include the individual members and employees of such association.

e. Policies may include dependents of the employees, including the spouse.

f. The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A. This paragraph shall also apply to corporations operating within the state who provide insurance coverage for their employees directly, and the commissioner shall have the authority to enforce the provisions of this paragraph.

7. A policy issued to the department of human services, which shall be deemed the policyholder, to insure eligible persons for medical assistance, or for both medical assistance and additional medical assistance, as defined by chapter 249A as hereafter amended.

8. A policy issued to a resident of this state under a group life, accident, or health insurance policy issued to a group other than one described in subsections 1 through 7, subject to the following requirements:

a. The commissioner determines that all of the following apply:

(1) The issuance of the group policy is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of acquisition or administration.

(3) The benefits under the group policy are reasonable in relation to the premium charged.

b. The commissioner need not make a determination under paragraph "a" if the commissioner determines that the group insurance coverage offered in this state by an insurer or other person is offered under a policy issued in another state and that state or another state in which the policy is offered, having requirements substantially similar to those in paragraph "a", has determined that the policy meets those requirements.

c. The premium for the policy shall be paid either from the policyholder's funds, or from funds contributed by the covered person, or both.

d. The insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

e. If compensation of any kind will or may be paid to the policyholder in connection with the group policy, the insurer shall provide to the prospective insured written notice that compensation will or may be paid. Notice shall be provided whether the compensation is direct or indirect, and whether the compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the direction of the policyholder or any entity affiliated with the policyholder by ownership, contract, or employment. The notice shall be placed on or accompany any document designed for the enrollment of prospective insureds.

87 Acts, ch 63, §1 HF 610
NEW subsection 8

CHAPTER 509B

CONTINUATION AND CONVERSION OF GROUP HEALTH INSURANCE

509B.3 Continuation of benefits.

A group policy delivered or issued for delivery in this state which insures employees or members for accident or health insurance on an expense-incurred or service basis, other than for specific diseases or for accidental injuries only, shall provide that employees or members whose coverage under the group policy would otherwise terminate because of termination of employment or membership may continue their accident or health insurance under that group policy, for themselves and their eligible dependents, subject to all of the group policy's terms and conditions applicable to those forms of insurance and subject to all of the following conditions:

1. Continuation shall only be available to an employee or member if the employee or member was continuously insured under the group policy, and for similar benefits under any group policy which it replaced, during the entire three months' period immediately preceding the termination.

2. Continuation shall not be available for a person who is or could be covered by medicare. Continuation shall not be available for a person who is or is eligible to be covered by another group insured or uninsured arrangement which provides accident or health coverage, unless the person was covered by that other group policy immediately prior to the termination.

3. Continuation may exclude dental care, vision care, or prescription drug benefits or other benefits provided under the group policy which benefits are in addition to accident or health benefits.

4. An employee or member who wishes continuation of coverage must request continuation in writing to the employer or group policyholder within the ten-day period following the later of either of the following:

a. The date of the termination.

b. The date the employee is given notice of the right of continuation as provided in section 509B.5 by either the employer or the group policyholder.

If proper notice is given, the employee or member is not eligible to elect continuation more than thirty-one days after the date of termination.

5. An employee or member electing continuation shall pay monthly to the employer or group policyholder, in advance, the amount of contribution required by the employer or group policyholder, but not more than the group rate otherwise due for the insurance being continued under the group policy. If proper notice is given, the election of continuation by the employee or member together with the first contribution required to establish contributions on a monthly basis in advance, shall be given to the employer or group policyholder within thirty-one days of the date the group insurance would otherwise terminate.

6. Continuation of insurance under the group policy for any person shall terminate when the person becomes eligible for medicare or another group insured or uninsured accident or health arrangement, or earlier, when any of the following first occurs:

a. Nine months after the date the employee's or member's insurance under the policy would otherwise have terminated because of termination of employment or membership.

b. At the end of the period for which contributions were made if the employee or member fails to make timely payment of a required contribution and if proper notice is given as provided in section 509B.5, subsection 2.

c. If the person covered is a former spouse, upon the former spouse's remarriage.

d. The date on which the group policy is terminated or, in the case of an employee, the date the employer terminates participation under the group policy. However, if this paragraph applies and the coverage which would cease because of the employer's termination is replaced by similar coverage under a different group policy, all of the following apply:

(1) The employee, member, spouse, or eligible dependent may become covered under the different group policy, for the balance of the period that the employee or member would have remained covered under the prior group policy had a termination of the group policy as specified in paragraph "d" not occurred.

(2) The minimum level of benefits to be provided by the different group policy shall be the applicable level of benefits of the prior group policy, reduced by any benefits payable under the prior group policy.

(3) The prior group policy shall continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the prior group policy had not been replaced by the different group policy.

7. A notification of the continuation privilege shall be included with or in each certificate of coverage and as otherwise provided in section 509B.5 and shall contain the time limits for requesting the continued coverage.

8. The spouse of an employee or member, and any covered dependent children of the employee or member, whose coverage under the group policy would otherwise terminate because of dissolution or annulment of marriage or death of the employee or member shall have the same contribution and notice responsi-

bilities and privileges as provided under this chapter to the employee or member upon termination of employment or membership.

87 Acts, ch 115, §62 SF 374
Subsection 6, paragraph b amended

CHAPTER 511

PROVISIONS APPLYING TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

511.8 Investment of funds.

Any company, organized under chapter 508, shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve shall be the net present value of all outstanding policies, and contracts involving life contingencies. Any association, organized under chapter 510, accumulating any moneys to be held in trust for the purpose of the fulfillment of its policies or certificates, contracts, or otherwise, shall invest such accumulations in the securities provided in this section. Wherever, in this section, reference is made to "legal reserve", it shall mean the total accumulations in the case of an association organized under chapter 510. Nothing herein contained shall prohibit a company or association from holding a portion of its legal reserve in cash.

1. *United States government obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. If fixed interest-bearing obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such

insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant.

However, with respect to fixed interest-bearing obligations which are issued, assumed or guaranteed by a financial company, the net earnings by the financial company available for its fixed charges for the period of five fiscal years preceding the date of acquisition of the obligations by the insurance company shall have averaged per year not less than one and one-fourth times such average annual fixed charges of the issuing, assuming or guaranteeing financial company applicable to such period, and, during at least one of the last two years of the period, its net earnings shall have been not less than one and one-fourth times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and speculative elements are not predominant in their investment qualities and characteristics. As used in this paragraph, "financial company" means a corporation which on the average over its last five fiscal years preceding the date of acquisition of its obligations by the insurer, has had at least fifty percent of its net income, including income derived from subsidiaries, derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring, or from similar or related lines of business.

b. If adjustment, income or other contingent interest obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year.

The term "net earnings available for fixed charges" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation and depletion, but nonrecurring items of income or expense may be excluded.

The term "fixed charges" as used herein shall include interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

The term "corporation" as used in this chapter includes a joint stock association, a partnership, or a trust.

The securities, real estate, and mortgages described in this section include participations, which means instruments evidencing partial or undivided collective interests in such securities, real estate, and mortgages.

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.

(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition.

The term "preferred dividend requirements" shall mean cumulative or noncumulative dividends whether paid or not.

The term "fixed charges" shall be construed in accordance with subsection 5 above. The term "net earnings available for fixed charges and preferred dividends" as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

b. Guaranteed stocks.

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph "a" of subsection 5 above, except that all guaranteed dividends shall be included in "fixed charges".

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

7. *Equipment trust obligations.* Subject to the restrictions contained in subsection 8, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used wholly or in part in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations within twenty years from date of issue, and also provide:

a. For vesting of title to such equipment free from encumbrance in a corporate trustee, or

b. For creation of a first lien on such equipment.

8. *Further restrictions.* Securities included under subsections 5, 6 and 7 shall not be eligible:

a. If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph "a" of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

b. The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) With the exception of public securities, two percent of the legal reserve in the securities of any one corporation. Five percent of the legal reserve in the securities of any one public utility corporation.

(2) Fifty percent of the legal reserve in the securities described in subsection 5 issued by other than public utility corporations. Fifty percent of the legal reserve in the securities described in subsection 5 issued by public utility corporations.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in securities described in subsection 7.

c. Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing (known commercially as pro forma statements) may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

9. *Real estate bonds and mortgages.*

a. Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first or second lien upon otherwise unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by the first or second lien shall not exceed ninety percent of the value of the property upon which it is a lien. However, a company or organization shall not acquire an indebtedness secured by a first or second lien upon a single parcel of real property, or upon a leasehold interest in a single parcel of real property, in excess of two percent of its legal reserve. These limitations do not apply to obligations described in paragraphs "b", "c", "d", "e" and "f" of this subsection.

Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner contracts to keep the property adequately insured during the life of the loan in some reliable fire insurance companies, or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assignee as its interest appears at the time of the loss.

For the purpose of this subsection a mortgage or deed of trust is not other than a first or second lien upon property by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when the real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

b. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the "National Housing Act", as heretofore and hereafter amended.

c. Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Title III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346—Seventy-eighth Congress, Chapter 268—2nd Session, cited as the "Servicemen's Readjustment Act of 1944", as heretofore and hereafter amended.

d. Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

e. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Title I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the "Farmers Home Administration Act of 1946", as heretofore or hereafter amended.

f. Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsection 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph "a" of subsection 5 of this section, if the terms of the bond, note or other evidence of

indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada approved March 18, 1954, cited as the "National Housing Act, 1954", as heretofore and hereafter amended.

10. *Real estate.*

a. Real estate in this state which is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of buildings for such purposes, there may be added rooms for rent. Before the company or association invests any of its funds in accordance with this paragraph it shall first obtain the consent of the executive council of this state. The maximum amount which a company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve. However, a stock company may invest such portion of its paid-up capital, in addition to ten percent of the legal reserve, as is not held to constitute a part of its legal reserve, under section 508.36, and the total legal reserve of the company shall be equal to or exceed the amount of its paid-up capital stock.

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled. Any farm real estate acquired under this paragraph shall be sold within five years from the date of acquisition unless the commissioner of insurance shall extend the time for such period or periods as seem warranted by the circumstances.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

14. *Urban real estate and personal property.* Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale. "Real property" as used in this subsection includes a leasehold of real estate, an undivided interest in a leasehold of real estate, and an undivided interest in the fee title of real estate. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment (for which the necessary data for the railroad company shall have been published) a balance of income available for fixed charges which shall have averaged per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment (for which the necessary data for both the railroad company and all class I railroads shall have been published):

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms "class I railroads", "balance of income available for the payment of fixed charges", "fixed charges" and "railway operating revenues" when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act; 24 Stat. L. 379; 49 U.S.C. §1 to 40 inc., 1001 to 1100 inc., provided that the "balance of income available for the payment of fixed charges" and "railway operating revenues remaining", as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing "fixed charges" there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent inter-

est bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.* Securities in an amount not less than the legal reserve as defined in this section shall be deposited and the deposit maintained with the commissioner of insurance or at such places as the commissioner may designate as will properly safeguard them. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, that deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required by this section. A stock company organized under the laws of this state shall not be required to make a deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or the commissioner's successors in office by warranty deed. The commissioner and the successors in office shall hold the real estate in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement is subject to check at the discretion of the commissioner.

The securities comprising the deposit of a company or association against which proceedings are pending under sections 508.17 and 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the same are being withdrawn.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income thereon unless proceedings against such company or association are pending under sections 508.17 and 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify the commissioner of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions hereof not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

17. *Rules of valuation.*

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

- (1) If purchased at par, at the par value.
- (2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. (1) Real estate acquired through foreclosure or in settlement or satisfaction of any indebtedness, shall be valued in an amount not greater than the amount of the unpaid principal of the defaulted indebtedness, plus any amounts actually expended for taxes, acquisition costs, (but not including any interest due or subsequently accrued thereon) and the cost of any additions or improvements.

(2) Real estate acquired and held under the provisions of paragraph "a" of subsection 10 hereof, shall be valued in an amount not greater than the original cost plus any subsequent additions or improvements.

c. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

d. All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the National Association of Insurance Commissioners.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.*

a. Common stocks or shares issued by solvent corporations or institutions are eligible if the total investment in stocks or shares in the corporations or institutions does not exceed ten percent of legal reserve, provided not more than one-half percent of the legal reserve is invested in stocks or shares of any one corporation. However, the stocks or shares shall be listed or admitted to trading on an established foreign securities exchange or a securities exchange in the United States or shall be publicly held and traded in the "over-the-counter market" and market quotations shall be readily available, and further, the investment shall not create a conflict of interest for an officer or director of the company between the insurance company and the corporation whose stocks or shares are purchased.

b. Common stocks or shares in a subsidiary corporation, the acquisition or purchase of which is authorized by section 508.33 are eligible if the total investment in these stocks or shares does not exceed five percent of the legal reserve. These stocks or shares are eligible even if the stocks or shares are not listed or admitted to trading on a securities exchange in the United States and are not publicly held and have not been traded in the "over-the-counter market". The stocks or shares shall be valued at their book value.

19. *Other foreign government or corporate obligations.* Bonds or other evidences of indebtedness, not to include currency, issued, assumed or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligations must be valid, legally authorized and issued. Any such corporate obligations must meet the qualifications established in subsection 5 of this section for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of two percent of the legal reserve of the life insurance company or association.

Eligible investments in foreign obligations under this subsection are limited to the types of obligations specifically referred to in this subsection. This subsection in no way limits or restricts investments in Canadian obligations and securities specifically authorized in other subsections of this section.

This subsection shall not authorize investment in evidences of indebtedness issued, assumed, or guaranteed by a foreign government which engages in a consistent pattern of gross violations of human rights.

20. *Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the funds in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its legal reserve under this subsection. For purposes of this subsection, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

21. *Use of custodian banks, clearing corporations, and the federal reserve book-entry system.*

a. As used in this subsection:

(1) "*Clearing corporation*" means a corporation as defined in section 554.8102, subsection 3.

(2) "*Custodian bank*" means a federal or state bank or trust company regulated under the Iowa banking laws or the federal reserve system, which maintains an account in its name in a clearing corporation and acts as custodian of securities owned by a domestic insurer.

(3) "*Federal reserve book-entry system*" means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and its agencies and instrumentalities, in the federal reserve banks through national banks, state banks, or trust companies, which either are members of the federal reserve system or otherwise have access to the computerized systems.

b. Securities deposited by a domestic insurance company with a custodian bank, or redeposited by a custodian bank with a clearing corporation, or held in the federal reserve book-entry system may be used to meet the deposit requirements of subsection 16. The commissioner shall adopt rules necessary to implement this section which:

(1) Establish guidelines on which the commissioner determines whether a custodian bank qualifies as a bank in which securities owned by an insurer may be deposited for the purpose of satisfying the requirements of subsection 16.

(2) Designate those clearing corporations in which securities owned by insurers may be deposited.

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with sections 508.17 and 508.18 whenever proceedings under those sections are instituted.

(4) Establish other safeguards applicable to the use of custodian banks and clearing corporations by insurers which the commissioner believes necessary to protect the policyholders of the insurers.

c. A security owned by a domestic insurer and deposited in a custodian bank or clearing corporation does not qualify for purposes of its legal reserve deposit unless the custodian bank and clearing corporation are approved by the commissioner for that purpose.

87 Acts, ch 64, §1-4 HF 639
 Subsection 5, paragraph b, NEW unnumbered paragraphs 4 and 5
 Subsection 7, unnumbered paragraph 1 amended
 Subsection 18, paragraph a amended
 Subsection 19, unnumbered paragraph 1 amended

CHAPTER 514

NONPROFIT HEALTH SERVICE CORPORATIONS

514.5 Contracts for service.

A hospital service corporation organized under chapter 504 or 504A may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals maintained and operated by the state or any of its political subdivisions, or by any corporation, association, or individual. Such hospital service corporation may also contract with an ambulatory surgical facility to provide surgical services to the corporation's subscribers. Hospital service is meant to include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care. Ambulatory surgical facility means a facility constructed and operated for the specific purpose of providing surgery to patients admitted to and discharged from the facility within the same day.

A medical service corporation organized under this chapter may enter into contracts with subscribers to furnish health care service through physicians and surgeons, dentists, podiatrists, osteopathic physicians, osteopathic physicians and surgeons, or chiropractors.

Any pharmaceutical or optometric service corporation organized under the provisions of said chapter may enter into contracts for the rendering of pharmaceutical or optometric service to any of its subscribers. Membership in any pharmaceutical service corporation shall be open to all pharmacies licensed under chapter 155A.

A hospital service corporation or medical service corporation organized under this chapter may enter into contracts with subscribers and providers to furnish health care services not otherwise allocated by this section.

87 Acts, ch 215, §48 HF 594
 Unnumbered paragraph 3 amended

CHAPTER 514F

UTILIZATION AND COST CONTROL

514F.1 Utilization and cost control review committees.

The boards of examiners under chapters 148, 150, 150A, 151, and 153 shall establish utilization and cost control review committees of licensees under the respective chapters, selected from licensees who have practiced in Iowa for at least the previous five years, or shall accredit and designate other utilization and cost control organizations as utilization and cost control committees under this section, for the purposes of utilization review of the appropriateness of levels of treatment and of giving opinions as to the reasonableness of charges for diagnostic or treatment services of licensees. Persons governed by the various chapters of Title XX of the Code and self-insurers for health care benefits to employees may utilize the services of the utilization and cost control review committees upon the

payment of a reasonable fee for the services, to be determined by the respective boards of examiners. The respective boards of examiners under chapters 148, 150, 150A, 151, and 153 shall adopt rules necessary and proper for the implementation of this section pursuant to chapter 17A. It is the intent of this general assembly that conduct of the utilization and cost control review committees authorized under this section shall be exempt from challenge under federal or state antitrust laws or other similar laws in regulation of trade or commerce.

87 Acts, ch 115, §63 SF 374
Section amended

CHAPTER 514G

LONG-TERM CARE INSURANCE

514G.1 Purpose.

The purpose of this chapter is to promote the public interest, to promote the availability of long-term care insurance, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

87 Acts, ch 131, §1 SF 276
NEW section

514G.2 Scope.

This chapter applies to policies delivered or issued for delivery in this state on or after July 1, 1987. This chapter does not supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance laws not in conflict with this chapter, except that laws and rules designated and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance. A policy which is not advertised, marketed, or offered as long-term care insurance or nursing home insurance need not meet the requirements of this chapter.

87 Acts, ch 131, §2 SF 276
NEW section

514G.3 Short title.

This chapter may be known and cited as the "*Long-Term Care Insurance Act*".

87 Acts, ch 131, §3 SF 276
NEW section

514G.4 Definitions.

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

1. "*Long-term care insurance*" means an insurance policy, insurance contract, insurance certificate, or rider, which is advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital; and includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. "*Long-term care insurance*" does not include an insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical ex-

pense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

2. *"Applicant"* means either of the following:

a. A person seeking to contract for an individual long-term care insurance policy for the benefit of that person.

b. The proposed certificate holder of a group long-term care insurance policy.

3. *"Certificate"* means a certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

4. *"Commissioner"* means the insurance commissioner.

5. *"Group long-term care insurance"* means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to any of the following:

a. One or more employers or labor organizations, or to a trust, or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations.

b. A professional, trade, or occupational association for its members or former or retired members, or a combination thereof, if the association is both:

(1) Composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation.

(2) Maintained in good faith for purposes other than obtaining insurance.

c. An association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

d. A group other than as described in paragraphs "a" through "c", subject to a finding by the commissioner that all of the following are true:

(1) The issuance of a group policy is not contrary to the best interest of the public.

(2) The issuance of the group policy would result in economies of acquisition or administration.

(3) The benefits are reasonable in relation to the premiums charged.

6. *"Policy"* means a policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepared health plan, health maintenance organization, or any similar organization.

87 Acts, ch 131, §4 SF 276
NEW section

514G.5 Limits of group long-term care insurance.

Group long-term care insurance coverage shall not be offered to a resident of this state under a group policy issued in another state to a group described in section 514G.4, subsection 5, paragraph "d", unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state has made a determination that long-term care insurance requirements have been met.

87 Acts, ch 131, §5 SF 276
NEW section

514G.6 Limitations on associations.

1. Prior to advertising, marketing, or offering a policy within this state, an association or a trust or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association has at the outset a minimum of one hundred persons and has been organized and maintained in good faith for purposes other than that of obtaining

insurance; has been in active existence for at least one year; and has a constitution and bylaws which provide all of the following:

a. The association must hold regular meetings not less than annually to further the purposes of the members.

b. Except for credit unions, the association must collect dues or solicit contributions from members.

c. The members must have voting privileges and representation on the governing board and committees.

2. Thirty days after such filing the association or associations will be deemed to satisfy such organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

87 Acts, ch 131, §6 SF 276
NEW section

514G.7 Disclosure and performance standards for long-term care insurance.

1. *Rules.* The commissioner may adopt rules for full and fair disclosure of the terms and benefits of a long-term care insurance policy, including but not limited to rules setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

2. *Prohibitions.* A long-term care insurance policy shall not:

a. Be cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.

b. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

3. *Preexisting conditions.*

a. A long-term care insurance policy or certificate shall not use a definition of "preexisting condition" which is more restrictive than the following: "Preexisting condition" means the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by or received from a provider of health care services, within the limitation periods specified below:

(1) Six months preceding the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage.

(2) Twenty-four months preceding the effective date of coverage of an insured person who is under age sixty-five on the effective date of coverage.

b. A long-term care insurance policy shall not exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within the shortest applicable period specified below:

(1) Six months following the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage.

(2) Twenty-four months following the effective date of coverage of an insured person who is under age sixty-five on the effective date of coverage.

c. The commissioner may extend the limitation periods in paragraphs "a" and "b" of this subsection to specific age group categories in specific policy forms, upon findings that the extension is in the best interest of the public.

d. The definition of "preexisting condition" does not prohibit either of the following:

(1) An insurer from using an application form designed to elicit the complete health history of an applicant.

(2) An insurer from underwriting in accordance with that insurer's established underwriting standards based on the answers on an application conforming with subparagraph (1).

4. *Prior institutionalization.* A long-term care insurance policy which provides benefits only following institutionalization shall not condition the benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

5. *Rules.* The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rules.

6. *Right to return after examination.*

a. Except as provided in paragraph "b", an individual long-term care insurance policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded, if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies must have a notice prominently printed on the first page of the policy or attached to the first page stating in substance that the policyholder has the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

b. A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to the first page stating in substance that the insured person has the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason.

7. *Outline of coverage.* An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall deliver the outline no later than at the time of policy delivery. An outline of coverage must include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums.

d. A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

8. *Certificates.* A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this state shall include all of the following:

a. A description of the principal benefits and coverage provided in the policy.

b. A statement of the principal exclusions, reductions, and limitations contained in the policy.

c. A statement that the group master policy determines governing contractual provisions.

9. *Compliance required.* A policy shall not be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this chapter.

87 Acts, ch 131, §7 SF 276
NEW section

514G.8 Administrative procedures.

Rules adopted pursuant to this chapter must be in accordance with the provisions of section 505.8.

87 Acts, ch 131, §8 SF 276
NEW section

CHAPTER 515

INSURANCE OTHER THAN LIFE

515.20 Guaranty capital.

A mutual company organized under this chapter may establish and maintain guaranty capital of at least fifty thousand dollars made up of multiples of ten thousand dollars, divided into shares of not less than fifty dollars each, to be invested as provided for the investment of insurance capital and funds by section 515.35. Guaranty shareholders shall be members of the corporation, and provision may be made for representation of the shareholders of the guaranty capital on the board of directors of the corporation. The representation shall not exceed one-third of the membership of the board. Guaranty shareholders in a mutual company are subject to the same regulations of law relative to their right to vote as apply to its policyholders. The guaranty capital shall be applied to the payment of the legal obligations of the corporation only when the corporation has exhausted its assets in excess of the unearned premium reserve and other liabilities. If the guaranty capital is thus impaired, the directors may restore the whole, or any part of the capital, by assessment on the corporation's policyholders as provided for in section 515.18. By a legal vote of the policyholders of the corporation at any regular or special meeting of the policyholders of the corporation, the guaranty capital may be fully retired or may be reduced to an amount of not less than fifty thousand dollars, if the net surplus of the corporation together with the remaining guaranty capital is equal to or exceeds the amount of minimum assets required by this chapter for such companies, and if the commissioner of insurance consents to the action. Due notice of the proposed action on the part of the corporation shall be included in the notice given to policyholders and shareholders of any annual or special meeting and notice of the meeting shall also be given in accordance with the corporation's articles of incorporation. A company with guaranty capital, which has ceased to do business, shall not distribute among its shareholders or policyholders any part of its assets, or guaranty capital, until it has fully performed, or legally canceled, all of its policy obligations. Shareholders of the guaranty capital are entitled to interest on the par value of their shares at a rate to be fixed by the board of directors and approved by the commissioner, cumulative, payable semiannually, and payable only out of the surplus earnings of the company. However, the surplus account of the company shall not be reduced by the payment of the interest below the figure maintained at the time the guaranty capital was established. In addition, the interest payment shall not be made unless the surplus assets remaining after the payment of the interest at least equal the amount required by the statutes of Iowa to permit the corporation to continue in business. In the event of the dissolution and liquidation of a corporation having guaranty capital under this section, the shareholders of the capital are entitled, after the payment of all valid obligations of the company, to receive the par value of their respective shares, together with any unpaid interest on their shares, before there may be any distribution of the assets of the

corporation among its policyholders. These provisions are in addition to and independent of the provisions contained in section 515.19.

87 Acts, ch 115, §64 SF 374
Section amended

515.80 Cancellation of policy or contract.

1. A policy or contract of insurance which has not been previously renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

2. A commercial line policy or contract of insurance which has been renewed or which has been in effect for more than sixty days may not be canceled unless at least one of the following conditions occurs:

a. Nonpayment of premium.

b. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or contract, when renewing the policy or contract, or in presenting a claim under the policy or contract.

c. Actions by the insured which substantially change or increase the risk insured.

d. Determination by the commissioner that the continuation of the policy would jeopardize the insurer's solvency or would constitute a violation of the law of this or any other state.

e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a policy or contract term or condition.

3. A policy or contract of insurance may be canceled at any time if the insurer loses reinsurance coverage which provides coverage to the insurer for a significant portion of the underlying risk insured and if the commissioner determines that cancellation because of loss of reinsurance coverage is justified. In determining whether a cancellation for loss of reinsurance coverage is justified, the commissioner shall consider the following factors:

a. The volatility of the premiums charged for reinsurance in the market.

b. The number of reinsurers in the market.

c. The variance in the premiums for reinsurance offered by the reinsurers in the market.

d. The attempt by the insurer to obtain alternate reinsurance.

e. Any other factors deemed necessary by the commissioner.

4. A policy or contract of insurance shall not be canceled except by notice to the insured as provided in this subsection. A notice of cancellation shall include the reason for cancellation of the policy or contract. A notice of cancellation is not effective unless mailed or delivered to the named insured and a loss payee at least ten days prior to the effective date of cancellation, or if the cancellation is because of loss of reinsurance, at least thirty days prior to the effective date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

5. This section applies to all forms of property and casualty insurance written pursuant to this chapter.

87 Acts, ch 132, §3 HF 506
Section stricken and rewritten

515.81 Nonrenewal of policy or contract.

An insurer shall not fail to renew a policy or contract of insurance except by notice to the insured as provided in this section. Nonrenewal of a policy or contract includes a decision by the insurer not to renew the policy or contract, an increase in the premium of twenty-five percent or more, an increase in the deductible of twenty-five percent or more, or a material reduction in the limits or coverage of the policy or contract. However, a premium charge which is assessed after the

beginning date of the policy period for which the premium is due shall not be deemed a premium increase for the purpose of this section.

A notice of nonrenewal is not effective unless mailed or delivered by the insurer to the named insured and any loss payee at least forty-five days prior to the expiration date of the policy. If the insurer fails to meet the notice requirements of this section, the insured has the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy or contract. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing.

This section applies to all forms of property and casualty insurance written pursuant to this chapter. It does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal.

87 Acts, ch 132, §4 HF 506
Section stricken and rewritten

CHAPTER 515A

FIRE AND CASUALTY INSURANCE

515A.4 Rate filings.

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, the commissioner shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include the experience or judgment of the insurer or rating organization making the filing, its interpretation of any statistical data it relies upon, the experience of other insurers or rating organizations, or any other relevant factors. A filing and any supporting information shall be open to public inspection upon filing. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

2. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

4. Subject to the exception specified in subsection 5 of this section, each filing shall be on file for a waiting period of fifteen days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within such waiting period to the insurer or rating organization which made the filing that the commissioner needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commis-

sioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within thirty days of receipt thereof by the commissioner.

5. Specific inland marine rates on risks specially rated by a rating organization, or any specific filing with respect to a surety or guaranty bond required by law or by court or executive order, rule or regulation of a public body and not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

6. Under such rules and regulations as the commissioner shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such order, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as the commissioner may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in paragraph "b" of subsection 1 of section 515A.3.

7. Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

8. No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this chapter or in accordance with subsections 6 or 7 of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.

87 Acts, ch 132, §5 HF 506
Subsection 1, unnumbered paragraph 2 amended

RATE FILINGS IN COMPETITIVE MARKETS

515A.20 Definitions.

As used in sections 515A.21 through 515A.25 unless the context otherwise requires:

1. "*Market*" means the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including, but not limited to, consideration of coverage, policy terms, rate classifications, and underwriting. A geographic component is a geographical area in which buyers have a reasonable degree of access to the insurance product through sales outlets or other marketing mechanisms.

2. "*Competitive market*" means a market for which an order is in effect pursuant to section 515A.22 that a reasonable degree of competition does exist.

3. "*Noncompetitive market*" means a market which has not been found to be competitive pursuant to section 515A.22.

87 Acts, ch 132, §6 HF 506
NEW section

515A.21 Scope of application.

Section 515A.20 and sections 515A.22 through 515A.25 apply to all forms of casualty insurance except those described in sections 515A.11 and 515A.15, and those excluded by section 515A.2.

87 Acts, ch 132, §7 HF 506
NEW section

515A.22 Competitive market.

1. A noncompetitive market is presumed to exist unless the commissioner determines after a hearing that a reasonable degree of competition exists in the market and the commissioner issues an order to that effect. Such an order shall

not become effective until sixty days after the date of the order and shall expire not later than one year thereafter unless the commissioner renews the order. Any affected insurer or insured may petition for a hearing on the renewal of an order relating to competitive status.

2. In determining whether a reasonable degree of competition exists, the commissioner shall consider relevant factors of workable competition pertaining to the market structure, market performance, and market conduct, and the practical opportunities available to consumers in the market to obtain pricing and other consumer information and to compare and obtain insurance from competing insurers. Such factors may include, but are not limited to, the following:

- a. The size and number of insurers actually engaged in the market.
- b. The profitability for insurers generally in the market segment and whether that profitability is unreasonably high.
- c. The price variance on premiums offered in the market.
- d. The availability of consumer information concerning the product and sales outlets or other sales mechanisms.
- e. The efforts of insurers to provide consumer information.
- f. Consumer complaints regarding the market generally.

87 Acts, ch 132, §8 HF 506
NEW section

515A.23 Noncompetitive market.

Unless the commissioner has determined a market to be competitive, the provisions of sections 515A.1 through 515A.19 apply.

87 Acts, ch 132, §9 HF 506
NEW section

515A.24 Filing of rates in a competitive market.

1. Subject to the exception specified in section 515A.4, subsection 5, a competitive filing shall become effective when filed and shall be deemed to meet the requirements of section 515A.3 as long as the filing remains in effect unless it is disapproved upon review by the commissioner.

2. In a competitive market, every insurer shall file with the commissioner all rates and supplementary rate information which are used in this state. The rates and supplementary rate information shall be filed not later than fifteen days after the effective date of the rates.

3. In a competitive market, if the commissioner finds that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory rating practices, the insurer shall file with the commissioner at least thirty days prior to the effective date of the rates all the rates and supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

87 Acts, ch 132, §10 HF 506
NEW section

515A.25 Disapproval of a rate filing in a competitive market.

1. If the commissioner believes that an insurer's rate filing in a competitive market violates the requirements of section 515A.3, the commissioner may require the insurer to file supporting information. If after reviewing the supporting information the commissioner continues to believe that the filing violates section 515A.3, the commissioner shall notify the insurer of the insurer's right to petition for a hearing on any subsequent order relating to the filing.

2. The commissioner may disapprove prefiled rates that have not become effective. However, the commissioner shall notify the insurer whose rates have been disapproved of the insurer's right to petition for a hearing on the disapproval within thirty days after the disapproval.

3. If the commissioner disapproves a filing in a competitive market, the commissioner shall issue an order specifying the reasons the filing fails to meet the requirements of section 515A.3. For rates in effect at the time of disapproval, the commissioner shall inform the insurer within a reasonable period of time the date when further use of the rates for policies or contracts of insurance is prohibited. The order shall be issued within thirty days of disapproval, or within thirty days of a hearing on the disapproval if a hearing is held. The order may include a provision for premium adjustment for the period after the effective date of the order for policies or contracts in effect on the date of the order.

4. Whenever an insurer has filed no legally effective rates as a result of the commissioner's disapproval of a filing, the commissioner shall on request of the insurer work with the insurer to develop interim rates for the insurer that are sufficient to protect the interest of all parties and the commissioner may order that a specified portion of the premium be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately. The commissioner may waive distribution if the commissioner determines that the amount involved would not warrant such action.

87 Acts, ch 132, §11 HF 506
NEW section

CHAPTER 516B

AUTOMOBILE LIABILITY POLICIES

516B.3 Minor traffic violations not considered in establishing rates.

1. The commissioner shall require that insurance companies transacting business in this state not consider speeding violations for ten miles per hour or less over the legal speed limit in speed zones that have a legal speed equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour for the purpose of establishing rates for motor vehicle insurance charged by the insurer and shall require that insurance companies not cancel or refuse to renew any such policy for such violations. In any twelve-month period, this section applies only to the first two such violations which occur.

2. If the rate for motor vehicle insurance is based on an operating record of a period longer than twelve months in length, the twelve-month periods under subsection 1 shall not overlap.

87 Acts, ch 120, §8 SF 311
Applies to insurance policies issued or renewed on or after July 1, 1987; 87 Acts, ch 120, §10 SF 311
Effective May 12, 1987
NEW section

CHAPTER 521A

INSURANCE HOLDING COMPANY SYSTEMS

521A.2 Subsidiaries of insurers.

1. *Authorization.* Any domestic insurer, either by itself or in co-operation with one or more persons, subject to the limitations set forth herein or elsewhere in this chapter, may organize or acquire one or more subsidiaries engaged or registered to engage in one or more of the following businesses or activities:

a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.

b. Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries or intermediate insurer subsidiaries.

c. Investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.

d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.

e. Acting as a broker dealer subject to or registered pursuant to the Securities Exchange Act of 1934 as amended.

f. Rendering financial services or advice to individuals, governments, government agencies, corporations, or other organizations or groups.

g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.

h. Ownership and management of assets which the parent corporation could itself own and manage. However, the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer.

i. Acting as administrative agent for a government instrumentality which is performing an insurance function.

j. Financing of insurance premiums, agents and other forms of consumer financing.

k. Any other business or service activity reasonably ancillary to an insurance business.

l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in paragraphs "a" to "k" inclusive.

2. *Exception.* Nothing contained in subsection 1 of this section shall prohibit a domestic insurer, either by itself or in co-operation with one or more persons, from investing amounts up to a total of ten percent of surplus in one or more subsidiaries or affiliates organized to do any lawful business.

3. *Additional investment authority.* In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Title, a domestic insurer may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed fifty percent of the insurer's surplus as regards policyholders, if after the investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and both of the following shall be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph "a" of this subsection or in chapters 511, 515, 518A, and 520 applicable to the insurer. For the purpose of this paragraph, "total investment of the insurer" shall include both:

(1) Any direct investment by the insurer in an asset.

(2) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

c. With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, if after the investment the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

4. *Exemption from investment restrictions.* Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection 3 of this section hereof shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the Code applicable to such investments of insurers.

5. *Qualification of investment—when determined.* Whether any investment pursuant to subsection 3 meets the applicable requirements of the subsection is to be determined before the investment is made by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, excluding dividends.

6. *Cessation of control.* If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of the Code, and the insurer has notified the commissioner thereof.

87 Acts, ch 115, §65 SF 374
Subsection 3, paragraph c amended

521A.4 Registration of insurers.

1. *Registration.* An insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards which are substantially similar to those contained in this section and section 521A.5, subsection 1, paragraph "a", and are adopted by statute or regulation in the jurisdiction of its domicile. The insurer shall also file a copy of the summary of its registration statement as required by subsection 4 in each state in which that insurer is authorized to do business if requested to do so by the commissioner of that state. An insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by March 31 of each year for the previous calendar year unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of the company's domiciliary jurisdiction.

2. *Information and form required.* Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

a. The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

b. The identity and relationship of every member of the insurance holding company system.

c. The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

(2) Purchases, sales, or exchanges of assets.

(3) Transactions not in the ordinary course of business.

(4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

(5) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles.

(6) Reinsurance agreements.

(7) Dividends and other distributions to shareholders.

d. A pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system.

e. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

3. *Materiality.* Information need not be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the next preceding December 31 are not material for purposes of this section.

4. *Summary of registration statement.* All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the next preceding registration statement.

5. *Information of insurers.* Any person within an insurance holding company system subject to registration is required to provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with this chapter.

6. *Termination of registration.* The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

7. *Consolidated filing.* The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

8. *Alternative registration.* The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 of this section and to file all information and material required to be filed under this section.

9. *Exemptions.* The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

10. *Disclaimer.* Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and basis for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a

disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

11. *Violations.* The failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section.

87 Acts, ch 115, §66 SF 374
Subsection 1 amended

521A.11A Recovery.

1. Subject to subsections 2 through 4, if an order for liquidation, conservation, or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order may recover on behalf of the insurer either of the following if made within one year preceding the filing of the petition for liquidation, conservation, or rehabilitation:

a. From a parent corporation, holding company, affiliate, or other person who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock.

b. Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or a subsidiary of the insurer to a director, officer, agent, or employee.

2. A distribution is not recoverable if the parent holding company, affiliate, or other person shows that when the distribution was paid it was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

3. A parent corporation, holding company, affiliate, or other person who otherwise controlled the insurer or affiliate at the time the distributions were paid is liable only up to the amount of distributions or payments under subsection 1 that the person received. A person who otherwise controlled the insurer at the time the distributions were declared is liable only up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, each shall be separately liable for their distributive share.

4. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

5. To the extent that a person liable under subsection 3 is insolvent or otherwise fails to pay claims due from the person pursuant to this section, the person's parent corporation, holding company, affiliate, or other person who otherwise controlled it at the time the distribution was paid, is separately liable for its share of any resulting deficiency in the amount recovered from the parent corporation, holding company, affiliate, or other person who otherwise controlled it.

87 Acts, ch 115, §67 SF 374
Subsection 5 amended

CHAPTER 523A

SALES OF FUNERAL SERVICES AND MERCHANDISE

Administrative and reporting requirements of
87 Acts, ch 30, apply to agreements in effect
on July 1, 1987, as well as to agreements
entered into on or after that date

523A.1 Trust fund established.

Whenever an agreement is made by any person, firm, or corporation to furnish, upon the future death of a person named or implied in the agreement, funeral

services or funeral merchandise, a minimum of eighty percent of all payments made under the agreement shall be and remain trust funds until occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

Interest or income earned on amounts deposited in trust under this section shall remain in trust under the same terms and conditions as the payments made under the agreement, except that the seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income, on a calendar year basis. The early withdrawal of interest or income pursuant to this provision does not affect the purchaser's right to the full refund or credit of such interest or income in the event the payments and interest in trust are released to the purchaser or in the event of a nonguaranteed price agreement, respectively. This provision does not affect the purchaser's right to a total refund of principal and interest or income in the event of nonperformance.

If an agreement pursuant to this section is to be paid in installment payments, the seller shall deposit eighty percent of each payment in trust until the full amount to be trusted has been deposited. If the agreement is financed with or sold to a financial institution, then the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within thirty days after the close of the month in which payment is received from the financial institution.

This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse under the control of the seller when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied.

87 Acts, ch 30, §3 HF 614
Section amended

523A.2 Deposit of funds—records—examinations—reports.

1. a. All funds held in trust under section 523A.1 shall be deposited in a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department thereof, within thirty days after the receipt of the funds and shall be held in a separate account or in one common trust fund under a trust agreement in the name of the depositor in trust for the designated beneficiary until released pursuant to section 523A.1.

b. The seller under an agreement referred to in section 523A.1 shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust, and shall make these records available to the commissioner for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523A.1 shall file with the commissioner not later than March 1 of each year a report including the following information:

(1) The name and address of the seller and the name and address of the establishment that will provide the funeral services or funeral merchandise.

(2) The name of the purchaser, beneficiary, and the amount of each agreement under section 523A.1 made in the preceding year and the date on which it was made.

(3) The total value of agreements subject to section 523A.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523A.1, during the preceding year.

(4) The amount of any payments received pursuant to agreements reported in previous years in accordance with subparagraphs (2) and (3) and the amount of those payments deposited in trust for each purchaser.

(5) The change in status of any trust account, including total amount of interest or income withdrawn from each trust account in the preceding year, and for each purchaser, any other amounts withdrawn from trust and the reason for each withdrawal. However, regular increments of interest or income need not be reported on a yearly basis.

(6) The name and address of the financial institution in which trust funds were deposited, and the name and address of each insurance company which funds agreements under section 523A.1.

(7) The name and address of each purchaser of funeral merchandise delivered in lieu of trusting pursuant to section 523A.1, and a description of that merchandise for each purchaser.

(8) The complete inventory of funeral merchandise and its location in the seller's possession that has been delivered in lieu of trusting pursuant to section 523A.1.

(9) Other information reasonably required by the commissioner for purposes of administration of this chapter.

The information required by subparagraphs (7) and (8) shall include a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the funeral merchandise specified in subparagraph (8) and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner.

The report shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

d. A financial institution referred to in paragraph "a" shall file notice with the commissioner of all funds deposited under the trust agreement. The notice shall be on forms prescribed by the commissioner and shall be filed not later than March 1 of each year. Each notice shall contain the required information for all deposits made during the previous calendar year. Forms may be obtained from the commissioner.

e. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

f. The state or federally insured bank, savings and loan association, or credit union in which trust funds are held shall not be owned or under the control of the seller and shall not use any funds required to be held in trust pursuant to this chapter or chapter 566A to purchase an interest in any contract or agreement to which the seller is a party, or otherwise to invest, directly or indirectly, in the seller's business operations.

g. The bank, savings and loan, credit union, or trust department thereof, in which trust funds are held shall serve as trustee to the extent that organization has been granted those powers under the laws of this state or the United States and may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund. The trustee may combine trust accounts established pursuant to this chapter as long as a separate accounting of each purchaser's principal, interest, and income is maintained. The seller may appoint an independent investment advisor to act in an advisory capacity with the trustee relative to the investment of the trust funds. The trust shall pay the cost of the operation of the trust and any annual audit fees.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523A.1 shall file annually with the commissioner an authorization for the commissioner or a designee to investigate, audit, and verify

all funds, accounts, safe-deposit boxes, and other evidence of trust funds held by or in a financial institution.

3. The commissioner shall adopt rules under chapter 17A specifying the form, content, and cost of the forms for the notices and disclosures required by this section, and shall sell blank forms at that cost to any person on request.

4. If a seller under an agreement referred to in section 523A.1 ceases to do business, whether voluntarily or involuntarily, all funds held in trust under section 523A.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The commissioner may require the performance of an audit of the seller's business by a certified public accountant if the commissioner receives reasonable evidence that the seller is not complying with this chapter. The audit shall be paid for by the seller, and a copy of the report of audit shall be delivered to the commissioner and to the seller.

6. A seller or financial institution that knowingly fails to comply with any requirement of this section or that knowingly submits false information in a document or notice required by this section commits a serious misdemeanor.

7. This chapter does not prohibit the funding of an agreement otherwise subject to section 523A.1 by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. The seller of an agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained under this chapter and comply with the reporting requirements of this section.

87 Acts, ch 30, §4 HF 614
Section amended

523A.5 Scope of chapter—definitions.

1. This chapter applies only to the sale of funeral services, funeral merchandise, or a combination of these.

2. As used in this chapter:

a. "*Funeral services*" means one or more services to be provided at the time of the final disposition of a dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of these. "Funeral services" does not include perpetual care or maintenance.

b. "*Funeral merchandise*" means one or more types of personal property to be used at the time of the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, and interment receptacles. "Funeral merchandise" does not include real property, and does not include grave markers, tombstones, ornamental merchandise, and monuments.

c. "*Commissioner*" means the commissioner of insurance or the deputy appointed under section 502.601.

87 Acts, ch 30, §5, 6 HF 614
Subsection 1 amended
Subsection 2, NEW paragraph c

523A.7 Bond in lieu of trust fund.

1. In lieu of the trust fund required by sections 523A.1 and 523A.2, a seller may file with the commissioner a surety bond that is issued by a surety company authorized to do business in this state and that is conditioned on the faithful performance by the seller of agreements subject to this chapter. The liability of the surety extends to each agreement that is subject to this chapter and that is executed during the time the bond is in force and until performance of the agreement or rescission of the agreement by mutual consent of the parties; and, to the extent expressly agreed to in writing by the surety company under subsection 3, paragraph "b", the liability of the surety extends to each agreement that is subject to this chapter and that was executed prior to the time the bond was

in force and until performance of the agreement or rescission of the agreement by mutual consent of the parties. A buyer who is aggrieved by a breach of a condition of the bond covering the contract of that buyer may maintain an action against the bond, provided that if, at the time of the breach, the buyer is aware of the buyer's rights under the bond and how to file a claim against the bond, the surety shall not be liable as a result of any breach of condition unless notice of a claim is received by the surety within sixty days following the discovery of the acts, omissions, or conditions constituting the breach of condition, except as otherwise provided in subsection 2. A surety bond submitted under this subsection shall not be canceled by a surety company except upon a written notice of cancellation given by the surety company to the commissioner by restricted certified mail, and the surety bond shall not be canceled prior to the expiration of sixty days after the receipt by the commissioner of the notice of cancellation.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after the cancellation of a bond submitted under subsection 1, the seller shall be deemed to have breached the conditions of the surety bond with respect to all outstanding contracts subject to this chapter as of the day prior to cancellation of the bond. The commissioner shall mail written notice by restricted certified mail to the buyer under each outstanding contract of the seller that a claim against the bond must be filed with the surety company within sixty days after the date of mailing of the notice. The surety company shall cease to be liable with respect to all agreements except those for which claims are filed with the surety company within sixty days after the date the notices are mailed by the commissioner.

3. If a surety bond is canceled by a surety company under any conditions other than those specified in subsection 2, the seller shall comply with paragraphs "a" and "b":

a. The seller shall comply with the trust requirements of sections 523A.1 and 523A.2 with respect to all contracts subject to this chapter that are executed on or after the effective date of cancellation of the surety bond, or the seller may submit a substitute surety bond meeting the requirements of subsection 1, but the seller must comply with sections 523A.1 and 523A.2 with respect to any contracts executed on or after the effective date of cancellation of the earlier surety bond and prior to the date on which the later surety bond takes effect.

b. Within sixty days after the effective date of the cancellation of the surety bond, the seller shall submit to the commissioner an undertaking by another surety company that a substitute surety bond meeting the requirements of subsection 1 is in effect and that the liability of the substitute surety bond extends to all outstanding contracts of the seller that were executed but not performed or extinguished prior to the effective date of the substitute surety bond, or the seller shall submit to the commissioner a financial statement accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state certifying the total amount of outstanding liabilities of the seller on contracts subject to this chapter and proof of deposit by the seller in trust under sections 523A.1 and 523A.2 of either the amount specified in sections 523A.1, including interest as set by the commissioner based on the interest which would have been earned had the funds been maintained in trust, with respect to all of those outstanding contracts or, where applicable, that delivery of merchandise has been made in compliance with section 523A.1. The surety may require such security as is necessary to comply with this section. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding contracts of the seller except those with respect to which a breach of condition occurred prior to cancellation and timely claims were filed.

4. Section 523A.2, subsection 1, paragraphs "b", "c", and "e", subsection 5, and, to the extent it is applicable, subsection 6, apply to sellers whose agreements

are covered by a surety bond maintained under this section, and section 523A.2 continues to apply to any agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the commissioner shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.1 and 523A.2.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the attorney general shall seek an injunction to prohibit the seller from making further agreements subject to this chapter and shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform an agreement subject to this chapter, to the extent necessary to secure compliance with this chapter, and the county attorney may bring criminal charges under section 523A.2, subsection 6.

7. The surety under this section shall not be owned or under the control of the seller.

87 Acts, ch 30, §7 HF 614
Section amended

523A.8 Disclosures.

1. Every agreement for funeral merchandise or funeral services under this chapter shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall:

a. Identify the seller, the salesperson's permit and establishment name and permit number, the expiration date of the salesperson's permit, the purchaser, and the person for whom the funeral services or funeral merchandise are purchased if other than the purchaser.

b. Specify the funeral services or funeral merchandise, or both, to be provided, and the cost of each service and merchandise item.

c. State clearly the conditions on which substitution will be allowed.

d. Set forth the total purchase price and the terms under which it is to be paid.

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract.

f. State clearly whether the agreement is a revocable or irrevocable contract, and who has the authority to revoke the contract.

g. State the amount or percentage of money to be placed in trust.

h. Explain the disposition of the interest and disclose what fees and expenses may be charged if incurred.

i. Specify the purchaser's right to cancel and damages for cancellation, if any.

j. State the name and address of the commissioner.

2. Every agreement shall be signed by the purchaser, the seller, and if the agreement is for funeral services as defined in chapter 156, a person licensed to deliver those services.

87 Acts, ch 30, §8 HF 614
NEW section

523A.9 Establishment permits.

1. A person, as defined in section 4.1, subsection 13, shall not engage in the business of selling, promoting, or otherwise entering into agreements to furnish, upon the future death of a person named or implied in the agreement, funeral services, property for use in funeral services, or funeral merchandise without an establishment permit as provided for in this section. An establishment doing business shall obtain a permit for each location.

2. An applicant for a permit under this section shall submit to the commissioner an application on a form provided by the commissioner. The application shall include at a minimum the following information:

a. The name and location of the applicant's business.

b. The name and location of the provider who will provide the funeral services or funeral merchandise.

c. The name and address of each owner, officer, or other official of the applicant's business, or in the event that the applicant is a corporation, the names and addresses of the chief executive officer and the members of the board of directors.

d. The types of professional services or funeral merchandise to be sold.

An application for a permit pursuant to this section shall be accompanied by a copy of each sales agreement the permit holder will use for sales of funeral services or funeral merchandise under section 523A.1.

A permit holder shall inform the commissioner of changes in the information within thirty days of the change.

3. The applicant for a permit shall submit a fee in the amount of fifty dollars.

4. Permits granted under this section are not assignable.

5. Upon the filing of an application for a permit, if the commissioner finds that the applicant has not been convicted of a criminal offense involving dishonesty or false statement and can provide the funeral services or funeral merchandise the applicant purports to sell, the commissioner shall issue the permit.

6. If the commissioner does not grant the permit, the commissioner shall notify the applicant in writing of the denial and the reasons for the denial. The commissioner shall approve or deny every application for a license within ninety days after the filing thereof, but any failure of the commissioner to act within that time period shall not be deemed to be an approval of the application.

87 Acts, ch 30, §9 HF 614
Effective January 1, 1988; 87 Acts, ch 30, §20 HF 614
NEW section

523A.10 Sales permits.

1. An individual shall not sell, promote, or otherwise enter into an agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise without a permit as provided for in this section. An individual permit holder must be an employee or agent of an establishment which holds a permit pursuant to section 523A.9 and which can deliver the funeral services or funeral merchandise being sold. The establishment is liable for the acts of its employees and agents, independent or otherwise, performed in the course of obtaining or attempting to obtain an agreement for the sale of funeral services or funeral merchandise under section 523A.1.

2. This chapter does not allow a person to engage in the practice of mortuary science without a license. However, a person having a valid permit under this section may engage in the preneed sale of a funeral director's services as an employee or agent of a funeral establishment that may furnish the funeral services in accordance with chapter 156.

3. An applicant for a permit under this section shall submit to the commissioner an application on a form provided by the commissioner. The application shall include at a minimum the following information:

a. The name and address of the applicant.

b. The name and address of the applicant's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, and, if different, the name and address of the provider who will provide the funeral services or funeral merchandise.

A permit holder shall inform the commissioner of changes in the information within thirty days of the change.

4. The permit shall be deemed effective upon filing the application with the commissioner. The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date. A permit under this section shall expire one year from the date the application is filed.

5. The application fee shall be five dollars.
6. Permits granted under this section are not assignable.
7. The commissioner may revoke a permit if the commissioner determines that the permit holder has been convicted of a criminal offense involving dishonesty or false statement or that the establishment cannot provide the funeral services or funeral merchandise the establishment purports to sell.

87 Acts, ch 30, §10 HF 614
 Effective January 1, 1988; 87 Acts, ch 30, §20 HF 614
 NEW section

523A.11 Investigations.

The attorney general or the commissioner may, for the purpose of discovering violations of this chapter or any rules adopted under this chapter:

1. Investigate the business and examine the books, accounts, records, and files used by every permit holder under this chapter.
2. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.
3. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

87 Acts, ch 30, §11 HF 614
 NEW section

523A.12 Suspension or revocation of permits.

1. The commissioner may, pursuant to chapter 17A, suspend or revoke any permit issued pursuant to this chapter if the commissioner finds any of the following:

- a. The permit holder has violated any provisions of this chapter or any rule adopted under this chapter or any other state or federal law applicable to the conduct of the permit holder's business.
- b. Any fact or condition exists which, if it had existed at the time of the original application for the permit, would have warranted the commissioner refusing originally to issue the permit.
- c. The permit holder is found upon investigation to be insolvent, in which case the permit shall be revoked immediately.
- d. The permit holder, for the purpose of avoiding the trusting requirement for funeral services under section 523A.1, attributes amounts paid pursuant to the agreement to funeral merchandise that is delivered under section 523A.1 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of funeral merchandise to be delivered pursuant to section 523A.1 than the services are regularly and customarily sold for when not sold in conjunction with funeral merchandise is evidence that the permit holder is acting with the purpose of avoiding the trusting requirement for funeral services under section 523A.1.

2. The commissioner may, on good cause shown, suspend any permit for a period not exceeding thirty days, pending investigation.

Except as provided in the preceding paragraph, a permit shall not be revoked or suspended except after notice and hearing in accordance with chapter 17A.

3. Any permit holder may surrender a permit by delivering to the commissioner written notice that the permit holder surrenders the permit, but the surrender shall not affect the permit holder's civil or criminal liability for acts committed before the surrender.

4. Revocation, suspension, or surrender of a permit does not impair or affect the obligation of any preexisting lawful contract between the permit holder and any person.

87 Acts, ch 30, §12 HF 614
NEW section

523A.13 Prosecution for violations of law.

If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general the grounds for the belief, including all evidence in the commissioner's possession, in order that the attorney general may proceed with the matter as the attorney general deems appropriate. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county attorney's county.

87 Acts, ch 30, §13 HF 614
NEW section

523A.14 Injunctions.

The attorney general may apply to the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the attorney general may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, and records germane to the hearing upon the petition for an injunction. Upon proof of any of the offenses described in the petition for injunction the court may grant the injunction.

87 Acts, ch 30, §14 HF 614
NEW section

523A.15 Fraudulent practices.

A person who commits any of the following acts commits a fraudulent practice and is punishable as provided in chapter 714:

1. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.
2. Conspires to defraud in connection with the sale of funeral services or funeral merchandise under this chapter.
3. Deliberately misrepresents or omits a material fact relative to the sale of funeral services or funeral merchandise under this chapter.

87 Acts, ch 30, §15 HF 614
NEW section

523A.16 Rules.

The commissioner may adopt rules necessary to administer this chapter, in accordance with chapter 17A.

87 Acts, ch 30, §16 HF 614
NEW section

CHAPTER 523C

RESIDENTIAL SERVICE CONTRACTS

523C.7 Filing of forms of contract—fee.

1. A residential service contract shall not be issued or used in this state unless it has been filed with and approved by the commissioner. If the commissioner fails to inform the service company of objections to the form of the residential service

contract within thirty days after filing, the residential contract shall be deemed to have been approved by the commissioner provided it otherwise complies with this section.

2. Residential service contracts shall:

a. Be written in nontechnical, readily understood language, using words with common and everyday meanings.

b. Clearly, conspicuously, and plainly specify all of the following:

(1) The services to be performed by the service company, and the terms and conditions of performance.

(2) The fee, if any, to be charged for a service call.

(3) Each of the systems, appliances, and components covered by the contract.

(4) Any exclusions and limitations respecting the extent of coverage.

(5) The period during which the contract will remain in effect.

(6) All limitations respecting the performance of services, including any restrictions as to the time periods when services may be requested or will be performed.

(7) The following statement: "The issuer of this contract is subject to regulation by the insurance division of the department of commerce of the state of Iowa. Complaints which are not settled by the issuer may be sent to the insurance division."

c. Provide for the performance of services only. A residential service contract shall not provide for a payment to, or reimbursement or indemnification of the holder of the contract.

d. Provide for the performance of services upon a request by telephone to the service company without a requirement that claim forms or applications be filed prior to the rendition of services.

e. Provide for the initiation of services by or under the direction of the service company within forty-eight hours of the request for the services by the holder of the contract.

3. Any application for a residential service contract shall notify the purchaser that the person submitting the application to the service company for the purchaser is acting as the representative of the service company and not of the purchaser in that transaction.

4. To the extent necessary to administer the provisions of this chapter, the commissioner may, after notice and hearing, institute a residential service contract form approval or form review fee as the commissioner shall by rule set. The fee, if imposed, may be by dollar amount or based upon a percentage of the sale value of the contract.

87 Acts, ch 234, §434 HF 671
NEW subsection 4

CHAPTER 524

IOWA BANKING LAW

524.207 Expenses of the banking division—fees.

All expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the fund established in this section. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other money received by the superintendent to the treasurer of state within the time required by section 12.10. The treasurer of state shall hold these funds in a banking revolving fund that shall be established in the name of the superintendent for the payment of the expenses of the division. This fund is subject at all times to the

warrant of the department of revenue and finance, drawn upon written requisition of the superintendent or the superintendent's designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the banking division of the department of commerce. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the state banking board. Transfers shall not be made from the general fund of the state or any other fund for the payment of the expenses of the division. No part of the funds held by the treasurer of state for the account of the superintendent shall be transferred to the general fund of the state or any other fund, except as follows: Sixty thousand dollars each fiscal year shall be transferred to the general fund of the state. That amount shall be considered as one of the costs of the division. The funds held by the treasurer of state for the account of the superintendent shall be invested by the treasurer of state and the income derived from these investments shall be credited to the general fund of the state.

The authority to modify allotments provided in section 8.31 shall not apply to funds appropriated from the fund created in this section and held for the superintendent.

The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

87 Acts, ch 234, §435 HF 671
Section amended

524.302 Articles of incorporation.

The articles of incorporation of a state bank, in the form prescribed by the superintendent, shall set forth the following:

1. The name of the state bank, that it is incorporated for the purpose of conducting the business of banking, and that it is incorporated under the provisions of this chapter.

2. The location of its proposed or existing principal place of business including the name of the county, municipal corporation or unincorporated area.

3. The duration of the state bank which shall be perpetual.

4. The aggregate number of shares which the state bank shall have authority to issue, and the par value of such shares; if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each class.

5. If there is to be a preferred class, a statement of the preferences, voting rights, if any, limitations and relative rights in respect of the shares of such class.

6. Any provision, permissible under section 524.506, limiting or denying the shareholders the pre-emptive right to acquire additional shares of the state bank.

7. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this chapter is required or permitted to be set forth in the bylaws.

8. The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

9. The name and address of each incorporator.

10. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, for a transaction from which the director derives an improper personal benefit, or under subsections 1

and 2 of section 524.605. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

11. Any provision not inconsistent with law or the purposes for which the state bank is organized, which the incorporators elect to set forth; or any provision limiting any of the powers enumerated in this chapter.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. The articles of incorporation shall be signed by all of the incorporators and acknowledged before an officer authorized to take acknowledgments of deeds.

87 Acts, ch 212, §12 SF 471

NEW subsection 10 and former subsection 10 renumbered as 11

524.803 Business property of state bank.

1. A state bank shall have power to:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged solely in holding or operating real property used wholly or substantially by a state bank in its operations or acquired for its future use and in a corporation organized solely for the purpose of providing data processing services, as such services are defined in the first sentence of section 524.804.

d. Subject to the prior approval of the superintendent, invest in a bank service corporation as defined by, and in accordance with, the laws of the United States.

e. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which banks and customers may engage, by means of either the direct transmission of electronic impulses to and from a bank or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a bank, in transactions in which such banks are otherwise permitted to engage pursuant to applicable law.

f. Organize, acquire, or invest in a subsidiary for the purpose of engaging in any one or more of the following, subject to the prior approval of the superintendent:

(1) Nondepository activities that a state bank is authorized to engage in directly under this chapter.

(2) Any activity that a bank service corporation is authorized to engage in under state or federal law or regulation.

(3) Any activity authorized pursuant to section 524.825.

2. The book value of all real and personal property acquired and held pursuant to this section, of all alterations to buildings on real property owned or leased by a state bank, of all shares in corporations acquired pursuant to paragraphs "c" and "d" of subsection 1 of this section, and of any and all obligations of such corporations to the state bank, shall not exceed twenty-five percent of the capital, surplus and undivided profits of the state bank or such larger amount as may be approved by the superintendent.

3. Any real property which is held by a state bank pursuant to this section and which it ceases to use for banking purposes, or is acquired for future use but not

used within a reasonable period of time, shall be sold or disposed of by the state bank as directed by the superintendent.

87 Acts, ch 171, §13 HF 658
Amendment effective May 29, 1987
Subsection 1, NEW paragraph f

524.822 through 524.824 Reserved.

524.825 Securities activities.

Subject to the prior approval of the superintendent, a state bank or a subsidiary of a state bank organized or acquired pursuant to section 524.803, subsection 1, paragraph "f" may engage in directly, or may organize, acquire, or invest in a subsidiary for the purpose of engaging in securities activities and any aspect of the securities industry, including, but not limited to, any of the following:

1. Issuing, underwriting, selling, or distributing stocks, bonds, debentures, notes, interest in mutual funds or money-market-type mutual funds, or other securities.

2. Organizing, sponsoring, and operating one or more mutual funds.

3. Acting as a securities broker-dealer licensed under chapter 502. The business relating to securities shall be conducted through, and in the name of, the broker-dealer. The requirements of chapter 502 apply to any business of the broker-dealer transacted in this state.

A subsidiary engaging in activities authorized by this section may also engage in any other authorized activities under section 524.803, subsection 1, paragraph "f".

87 Acts, ch 171, §14 HF 658
Effective May 29, 1987
NEW section

524.901 Investments.

1. A state bank may invest without limitation for its own account in the following bonds or securities:

a. Obligations of the United States and bonds and securities with respect to which the payment of principal and interest is fully and unconditionally guaranteed by the United States.

b. Obligations issued by any or all of the federal land banks, any or all of the federal intermediate credit banks, any or all of the banks for co-operatives, and any or all of the federal home loan banks, organized under the laws of the United States.

c. Obligations issued by the federal national mortgage association, under the laws of the United States.

d. Any other bonds or securities which are the obligations of or the payment of principal and interest of which is fully and unconditionally guaranteed by a federal reserve bank or by any department, bureau, board, commission, agency or establishment of the United States, or any corporation owned directly or indirectly by the United States.

e. General obligations of the state of Iowa and of political subdivisions thereof.

f. Futures, forward, and standby contracts to purchase and sell any of the instruments eligible for state banks' purchase and sale, subject to the prior approval of the superintendent and pursuant to applicable federal laws and regulations governing such contracts. Purchase and sale of such contracts shall be conducted in accordance with safe and sound banking practices and with levels of the activity being reasonably related to the state bank's business needs and capacity to fulfill its obligations under the contracts.

g. Bonds and securities which are authorized investments under paragraph "a", "b", "c", or "d" include investments in an investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited to the United States government obligations de-

scribed in paragraph “a”, “b”, “c”, or “d” and to repurchase agreements fully collateralized by the United States government obligations described in paragraph “a”, “b”, “c”, or “d”, if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

2. A state bank may invest for its own account in other readily marketable bonds or securities, with investment characteristics as defined by the superintendent by general regulation applicable to all state banks, subject to the following limitations:

a. The total amount of the bonds or securities of any one issuer or obligor, other than revenue or improvement bonds issued by a municipality, the Iowa finance authority, or the agricultural development authority and subjected to separate investment limits under paragraph “b”, “c”, “d”, “f”, or “g” of this subsection, shall not exceed twenty percent of the capital and surplus of the state bank.

b. The total amount of special assessment improvement or refunding bonds which have been issued by a municipality under authority of section 384.68 and which are repayable from the proceeds of any one levy shall not exceed twenty percent of the capital and surplus of the state bank.

c. The total amount of revenue bonds and pledge orders which have been issued by a municipality under authority of chapter 384, division V, and which are repayable from the revenues of any one city utility, combined utility system, city enterprise or combined city enterprise shall not exceed twenty percent of the capital and surplus of the state bank.

d. The total amount of revenue bonds issued by a municipality pursuant to section 419.2 which have been issued on behalf of any one lessee, as defined in section 419.1, or which are guaranteed by any one guarantor, or which are issued on behalf of or guaranteed by a corporation, a ten percent or greater ownership interest in which is held by or in common with a lessee or guarantor, or any combination of the foregoing whereby the municipality could receive revenues for payment of such bonds from any one person or any group of persons under common control, shall not exceed twenty percent of the capital and surplus of the state bank.

e. No bond or security shall be eligible for investment by a state bank within this subsection if the bond or security has been in default either as to principal or interest at any time within five years prior to the date of purchase.

f. The total amount of bonds or notes issued by the agricultural development authority pursuant to chapter 175 which have been issued on behalf of any one beginning farmer, as defined in section 175.2, subsection 6, and the proceeds of which have been loaned to that beginning farmer shall not exceed twenty percent of the capital and surplus of the state bank.

g. The total amount of bonds or notes issued by the Iowa finance authority pursuant to chapter 220 which have been issued on behalf of any one small business as defined in section 220.1, subsection 28, or any one group home referred to in section 220.1, subsection 11, paragraph “a”, and the proceeds of which have been loaned to that small business or group home shall not exceed twenty percent of the capital and surplus of the bank.

h. The total amount of bonds or notes issued by the agricultural development authority pursuant to chapter 175 which have been issued on behalf of any one owner or operator of agricultural land within the state, as provided for in section 175.34, and the proceeds of which have been loaned to that owner or operator, shall not exceed twenty percent of the capital and surplus of the state bank for each borrower.

3. A state bank shall not, directly or indirectly, invest for its own account in the shares of any corporation except:

a. Shares in a federal reserve bank.

b. Shares in the federal national mortgage association.

c. When approved by the superintendent, shares and obligations of a corporation engaged solely in making loans for agricultural purposes eligible to discount or sell loans to a federal intermediate credit bank, commonly known as an agricultural credit corporation, in amounts not to exceed twenty percent of the capital and surplus of the state bank.

d. Shares in a corporation which the state bank is authorized to acquire and hold pursuant to section 524.803, subsection 1, paragraphs "c", "d", "e", and "f" and section 524.825.

e. Shares in an economic development corporation organized under chapter 496B to the extent authorized by and subject to the limitations of such chapter.

f. When approved by the superintendent, shares of a small business investment company as defined by the laws of the United States, except that in no event shall any such state bank hold shares in small business investment companies in an amount aggregating more than two percent of its capital and surplus.

g. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the state bank's investment in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A state bank shall not invest more than a total of five percent of its capital and surplus in investments permitted under this paragraph and paragraph "h". For purposes of this paragraph, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. "Equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

h. Shares or equity interests in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. The total amount of a state bank's investments under this paragraph and paragraph "g" shall not exceed five percent of the state bank's capital and surplus. The investment of a state bank in a small business under this paragraph shall be included with the obligations of the small business to the state bank that are incurred as a result of the exercise by the state bank of the powers conferred in section 524.902 for the purpose of determining the total obligations of the small business to the state bank at any one time under section 524.904. A state bank shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph. For purposes of this paragraph, "small business" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, which meets the appropriate small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state or other investments which provide an economic benefit to the state; and "equity interests" means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

i. Shares of investment companies, up to a maximum of twenty percent of capital and surplus of the state bank in any one company, if the portfolio of such an investment company consists wholly of investments in which the state bank could invest directly without limitation pursuant to this section.

j. Shares of investment companies whose portfolios contain investments which are subject to limitations pursuant to this section, provided that a state bank's investment in such shares does not exceed the limitation set forth in this section for the underlying instrument.

4. A state bank may invest in participation certificates issued by one or more production credit associations chartered under the laws of the United States in an amount which does not exceed, in the aggregate with respect to all such associations, twenty percent of the capital and surplus of the state bank.

5. A state bank may invest for its own account in the shares of a bankers' bank or in the shares of a bank holding company which owns a bankers' bank. A state bank shall not invest in more than one bankers' bank or in more than one bank holding company which owns a bankers' bank. A state bank shall not invest an amount greater than ten percent of its capital and surplus in the shares of a bankers' bank or in the shares of a bank holding company which owns a bankers' bank. A state bank shall not invest any amount if after the investment the state bank would own or control more than five percent of any class of the voting shares of a bankers' bank or a bank holding company which owns a bankers' bank.

6. A state bank may, in the exercise of the powers granted in this chapter, purchase cash value life insurance contracts which may include provisions for the lump sum payment of premiums and which may include insurance against the loss of the lump sum payment. The cash value life insurance contracts purchased from any one company shall not exceed twenty percent of capital and surplus of the state bank.

87 Acts, ch 171, §15-19 HF 658
 Amendments effective May 29, 1987
 Subsection 1, NEW paragraphs f and g
 Subsection 3, paragraph d amended
 Subsection 3, NEW paragraphs i and j
 NEW subsection 6

CHAPTER 527

ELECTRONIC TRANSFER OF FUNDS

527.2 Definitions.

As used in this chapter, the following definitions shall apply unless the context otherwise requires:

1. "*Administrator*" means and includes the superintendent of banking, the superintendent of savings and loan associations, and the superintendent of credit unions within the department of commerce and the supervisor of industrial loan companies within the office of the superintendent of banking. However, the powers of administration and enforcement of this chapter shall be exercised only as provided in section 527.3.

2. "*Batch basis*" means the periodic delivery of an accumulation of messages representing electronic funds transfer transactions authorized or rejected by the customer's financial institution at a prior time.

3. "*Central routing unit*" means any facility where electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are routed and transmitted to a financial institution, or to a data processing center, or to another central routing unit, wherever located.

4. "*Data processing center*" means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at a satellite terminal are received and are processed in order to enable the satellite terminal to perform any function for which it is designed. However, "*data processing center*" does not include a facility which is directly connected to a satellite terminal and which performs only the functions of direct transmission of all requested transactions from that terminal to a data processing facility without performing any

review of the requested transactions for the purpose of categorizing, separating, or routing. "*Categorizing*" means the process of reviewing and grouping of requested electronic funds transfer transactions according to the source or nature of the requested transaction. "*Separating*" means the process of interpreting and segregating requested electronic funds transfer transactions, or portions of such transactions, to provide for processing of information relating to such requested transactions or portions of such transactions. "*Routing*" means the process of interpreting and transmitting requested electronic funds transfer transactions to a destination selected at the time of interpretation and transmission from two or more alternative destinations.

5. "*Financial institution*" means and includes any bank incorporated under the provisions of chapter 524 or federal law, any savings and loan association incorporated under the provisions of chapter 534 or federal law, any credit union organized under the provisions of chapter 533 or federal law, and any corporation licensed as an industrial loan company under chapter 536A.

6. "*Multiple use terminal*" means any machine or device to which all of the following are applicable:

a. The machine or device is owned or operated by a person who primarily engages in a service, business or enterprise, including but not limited to the retail sale of goods or services, but who is not organized under the laws of this state or under federal law as a bank, savings and loan association, or credit union;

b. The machine or device is used by the person by whom it is owned or operated in some capacity other than as a satellite terminal; and

c. A financial institution proposes to contract or has contracted to utilize that machine or device as a satellite terminal.

7. "*Municipal corporation*" means an incorporated city.

8. "*On-line real time basis*" means the immediate and instantaneous delivery or return of an individual message through transmission of electronic impulses.

9. "*Premises*" means and includes only those locations where by applicable law financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; provided that with respect to an industrial loan company, "premises" means only a location where business may be conducted under a single license issued to the industrial loan company.

10. "*Satellite terminal*" means and includes any machine or device located off the premises of a financial institution, whether attended or unattended, by means of which the financial institution and its customers may engage through either the immediate transmission of electronic impulses to or from the financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the financial institution, in transactions which are incidental to the conduct of the business of the financial institution and which otherwise are specifically permitted by applicable law. However, the term "satellite terminal" does not include any such machine or device, wherever located, if that machine or device is not generally accessible to persons other than employees of a financial institution or an affiliate of a financial institution.

11. "*Unincorporated area*" means a location within this state not within the boundaries of a municipal corporation.

87 Acts, ch 158, §1, 2 SF 461
Former subsection 2 amended
Subsections alphabetized
NEW subsections 2, 7, 8 and 11

527.3 Enforcement.

1. For purposes of this chapter the superintendent of banking only shall have the power to issue rules applicable to, to accept and approve or disapprove applications or informational statements from, to conduct hearings and revoke any approvals relating to, and to exercise all other supervisory authority created

by this chapter with respect to banks; the superintendent of savings and loan associations only shall have and exercise such powers and authority with respect to savings and loan associations; the superintendent of credit unions only shall have and exercise such powers and authority with respect to credit unions; and the superintendent of banking or the superintendent's designee only shall have and exercise such powers and authority with respect to industrial loan companies.

2. The administrator shall have the authority to examine any person who operates a multiple use terminal or other satellite terminal, and any other device or facility with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution. Information obtained in the course of such an examination shall not be disclosed, except as provided by law.

3. Nothing contained in this chapter shall authorize the administrator to regulate the conduct of business functions or to obtain access to any business records, data, or information of a person who operates a multiple use terminal, except those pertaining to a financial transaction engaged in through a satellite terminal, or as may otherwise be provided by law.

4. Nothing contained in this chapter shall be construed to prohibit or to authorize the administrator to prohibit an operator of a multiple use terminal, other than a financial institution, or an operator of any other device or facility with which such terminal is interconnected, other than a central routing unit or data processing center (as defined in section 527.2) from using those facilities to perform internal proprietary functions, including the extension of credit pursuant to an open end credit arrangement.

5. An administrator may conduct hearings and exercise any other appropriate authority conferred by this chapter regarding the operation or control of a satellite terminal upon the written request of a person, including but not limited to, a retailer, financial institution, or consumer.

87 Acts, ch 158, §3 SF 461
NEW subsection 5

527.4 Establishment of satellite terminals—restrictions.

1. A satellite terminal shall not be established within this state by any financial institution, except one whose principal place of business is located in this state, or one who has a business location licensed in this state under chapter 536A.

2. A financial institution whose licensed or principal place of business is located in this state shall not establish a satellite terminal at any location outside of this state.

3. *a* A financial institution may establish any number of satellite terminals in any of the following locations:

(1) Within the boundaries of a municipal corporation if the principal place of business or an office of the financial institution is also located within the boundaries of the municipal corporation.

(2) Within an urban complex composed of two or more Iowa municipal corporations each of which is contiguous to or corners upon at least one of the other municipal corporations within the complex if the principal place of business or an office of the financial institution is also located in the urban complex.

(3) Within the unincorporated area of a county in which the financial institution has its principal place of business or an office.

(4) Within a municipal corporation located in the same county as the principal place of business or an office of the financial institution if another financial institution has not located its principal place of business or an office within the municipal corporation.

(5) At any retail sales location in this state if any of the following apply:

(a) The satellite terminal is not designed, configured, or operated to accept deposits or to dispense script or other negotiable instruments.

(b) The satellite terminal is not designed, configured, or operated to dispense cash except when operated by the retailer as part of a retail sales transaction.

(c) The satellite terminal is utilized for the purpose of making payment to the retailer for goods or services purchased at the location of the satellite terminal.

(d) The financial institution controls a satellite terminal described under subparagraph part (c) at a location of the retailer established pursuant to subparagraph (1), (2), (3), or (4).

A financial institution shall not establish a satellite terminal at any other location except pursuant to an agreement with a financial institution which is authorized by this paragraph "a" to establish a satellite terminal at that location and which will utilize the satellite terminal at that location. This paragraph "a" does not amend, modify, or supersede any provision of chapter 524 regulating the number or locations of bank offices of a state or national bank, or authorize the establishment by a financial institution of any offices or other facilities except satellite terminals at locations permitted by this paragraph "a".

b. Paragraph "a" of this subsection does not apply to a corporation licensed under chapter 536A. A corporation licensed under that chapter may establish within the boundaries of a municipal corporation, or an urban complex composed of two or more Iowa municipal corporations each of which is contiguous to or corners upon at least one of the other municipal corporations within the complex, any number of satellite terminals which are satellite terminals of a licensed business location of the corporation which is located within the municipal corporation or urban complex. The corporation shall not establish a satellite terminal at any other location except pursuant to an agreement with another financial institution which is authorized by the preceding sentence to establish a satellite terminal at that location and which utilizes the satellite terminal so established.

87 Acts, ch 158, §4 SF 461

Subsection 3, paragraph a stricken and rewritten

527.5 Satellite terminal requirements.

A satellite terminal may be utilized by a financial institution to the extent permitted in this chapter only if the satellite terminal is utilized and maintained in compliance with the provisions of this chapter and only if all of the following are complied with:

1. A satellite terminal in this state may be established by one or more financial institutions. The establishing financial institutions shall designate a single controlling financial institution which shall maintain the location, use, and operation of the satellite terminal, wherever located, in compliance with this chapter. The use and operation of a satellite terminal shall be governed by a written agreement between the controlling financial institution and the person controlling the physical location at which the satellite terminal is placed. The written agreement shall specify all of the terms and conditions, including any fees and charges, under which the satellite terminal is placed at that location. If the satellite terminal is a multiple use terminal, the written agreement shall specify, and may limit, the specific types of transactions incidental to the conduct of the business of a financial institution which may be engaged in through that terminal.

2. The satellite terminal shall be available for use on a nondiscriminatory basis by any other financial institution which has its principal place of business within this state, and by all customers who have been designated by a financial institution using the satellite terminal and who have been provided with a physical object or other method, approved by the administrator, by which to engage in electronic transactions by means of the satellite terminal. No financial institution shall be required to join, be a member or shareholder of, or otherwise

participate in any corporation, association, partnership, co-operative or other enterprise as a condition of its utilizing any satellite terminal located within this state.

3. An informational statement shall be filed and shall be maintained on a current basis with the administrator by the financial institution controlling a satellite terminal in this state, which sets forth all of the following:

- a. The name and business address of the controlling financial institution.
- b. The location of the satellite terminal.
- c. A schedule of the charges which will be required to be paid by a financial institution utilizing the satellite terminal.
- d. An agreement with the administrator that the financial institution controlling the satellite terminal will maintain that satellite terminal in compliance with this chapter.

The informational statement shall be accompanied by a copy of the written agreement required by subsection 1. The informational statement also shall be accompanied by a statement or copy of any agreement, whether oral or in writing, between the controlling financial institution and a data processing center or a central routing unit, unless operated by or solely on behalf of the controlling financial institution, by which transactions originating at that terminal will be received.

4. A satellite terminal in this state shall not be attended or operated at any time by an employee of a financial institution or an affiliate of a financial institution, except for the purpose of instructing customers, on a temporary basis, in the use of the satellite terminal, for the purpose of testing the terminal, or for the purpose of transacting business on the employee's own behalf.

5. A satellite terminal in this state shall bear a sign or label identifying each type of financial institution utilizing the terminal. A satellite terminal location in this state shall not be used to advertise individual financial institutions or a group of financial institutions. However, a satellite terminal shall bear a sign or label no larger than three inches by two inches identifying the name, address, and telephone number of the owner of the satellite terminal. The administrator may authorize methods of identification the administrator deems necessary to enable the general public to determine the accessibility of a satellite terminal.

6. The charges required to be paid by any financial institution which utilizes the satellite terminal shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

7. If the administrator finds grounds, under any applicable law or rule, for denying establishment of a satellite terminal the administrator shall notify the person filing the informational statement or an amendment thereto, within thirty days of the filing thereof, of the existence of such grounds. If such notification is not given by the administrator, the administrator shall be considered to have expressly approved the establishment and operation of the satellite terminal as described in the informational statement or amendment and according to the agreements attached thereto, and operation of the satellite terminal in accordance therewith may commence on or after the thirtieth day following such filing. However, this subsection shall not be construed to prohibit the administrator from enforcing the provisions of this chapter, nor shall it be construed to constitute a waiver of any prohibition, limitation or obligation imposed by this chapter.

8. a. A satellite terminal in this state shall not be operated in a manner to permit a person to credit a demand deposit account, savings account, share account, or any other account representing a liability of a financial institution, if that financial institution is located outside of this state.

b. Paragraph "a" of this subsection does not apply to a corporation licensed under chapter 536A. A satellite terminal shall not be operated in any manner to

permit a person to credit an account representing a liability of a corporation licensed under chapter 536A, if the business location of the corporation where the original records pertaining to the person's account are maintained is located outside of this state.

9. a. Satellite terminals located in this state shall be directly connected to either of the following:

(1) A central routing unit approved pursuant to this chapter.

(2) A data processing center which is directly connected to a central routing unit approved pursuant to this chapter.

b. If a data processing center which is directly connected to a satellite terminal located in this state does not authorize or reject a transaction originated at that terminal, the transaction shall be immediately transmitted by the data processing center to a central routing unit approved pursuant to this chapter, unless one of the following applies:

(1) The transaction is not authorized because of a mechanical failure of the data processing center or satellite terminal.

(2) The transaction does not affect a deposit account held by a financial institution with its principal office in this state.

c. This subsection does not limit the authority of a data processing center to authorize or reject transactions requested by customers of a financial institution pursuant to an agreement whereby the data processing center authorizes or rejects requested transactions on behalf of the financial institution and provides to the financial institution, on a batch basis and not on an on-line real time basis, information concerning authorized or rejected transactions of customers of the financial institution.

87 Acts, ch 158, §5-11 SF 461
Subsections 1-5 amended
Subsection 8, paragraph a amended
NEW subsection 9

527.8 Liability and errors.

1. As a condition of exercising the privilege of utilizing a satellite terminal, a financial institution is liable to each of its customers for all losses incurred by the customer as a result of the transmission or recording of electronic impulses as a part of a transaction not authorized by the customer or to which the customer was not a party. However, if the financial institution has provided the customer with a physical object or other method of engaging in a transaction at a satellite terminal which is unique to the customer, and losses are incurred by the customer as a result of the theft, loss or other compromise of that physical object or other method of engagement, the liability of the financial institution pursuant to this section shall not include the first fifty dollars of any losses incurred prior to the time the customer notifies the financial institution of the theft, loss or compromise except that the financial institution shall have no liability if the losses are a result of the customer's fraudulent acts or omissions.

2. If, upon receipt of a periodic statement of account from a financial institution, a customer or member of the financial institution believes that the statement contains an error with respect to a transaction engaged in by such person through a satellite terminal, then such person shall, within sixty days of the date on which such statement was mailed or otherwise delivered by the financial institution, notify the financial institution by means of a writing which (a) sets forth or otherwise enables the financial institution to identify the member or customer and the number of the account in question; (b) indicates the customer's or member's belief that the statement contains an error with respect to a transaction engaged in by such person through a satellite terminal, and states the amount of the alleged error; and (c) sets forth the reasons for the person's belief that the statement contains such an error. Unless the action required in subsection 3 is taken prior to the end of the thirty day period, the

financial institution shall acknowledge in writing its receipt of the notice provided for in this subsection within 30 days of its actual receipt thereof.

3. Within ninety days of the financial institution's receipt of the notice described in subsection 2, it shall either:

a. Correct the account in question and provide the customer or member with written notification of the correction and, if the correction is not in the exact amount of the alleged error, provide such person with a written explanation of any difference between the alleged error and the correction made; or

b. Provide the customer or member with a written explanation, after having conducted an investigation of the matter, stating the reason the financial institution believes the statement is correct and, within thirty days of further written request of the customer or member, provide such person with a written copy of the record of the transaction in question, as maintained by the financial institution pursuant to section 527.7.

4. A financial institution which has received a notice specified in subsection 2 shall not, prior to its compliance with subsection 3, close the account concerning which the dispute exists or restrict transactions in such account which affect only the portion thereof which is not in dispute. A financial institution which has complied with the provisions of subsection 3 with respect to an alleged error concerning a transaction engaged in through a satellite terminal shall have no further responsibility under subsections 2 to 4 if the customer or member continues to make substantially the same allegation with respect to such error.

5. If the correction of any error relating to a transaction engaged in through a satellite terminal in an account of a customer or member results in a credit to such account, the financial institution shall additionally credit such account with any amount of interest which would have been paid to such customer or member by the financial institution except for the error, or which was paid by such person to the financial institution as a result of the error.

6. A financial institution which fails to comply with the provisions of subsections 2 to 5 shall be liable to the customer or member who has complied with such provisions for a civil penalty in the amount of fifty dollars.

87 Acts, ch 158, §12 SF 461
Subsection 1 amended

527.9 Central routing units.

1. A central routing unit shall not be operated in this state unless written approval for that operation has been obtained from the administrator.

2. A person desiring to operate a central routing unit shall submit to the administrator an application which shall contain all of the following information:

a. The name and business address of the owner of the proposed unit.

b. The name and business address of each data processing center and other central routing unit with which the proposed central routing unit will have direct electronic communication.

c. The location of the proposed central routing unit.

d. A schedule of the charges which will be required to be paid to that applicant by each financial institution which utilizes the proposed central routing unit.

The application shall be accompanied by all agreements between the proposed central routing unit and all data processing centers and other central routing units respecting the transmission of transaction data; and a copy of any agreement between the proposed central routing unit and any financial institution establishing a satellite terminal unless that agreement theretofore has been filed with the administrator pursuant to section 527.5.

e. An agreement by the applicant that the proposed central routing unit will be capable of accepting and routing, and will be operated to accept and route, transmissions of data originating at any satellite terminal located in this state and controlled by the same type of financial institution as those financial institutions previously utilizing the services of the applicant central routing unit,

whether receiving from that terminal or from a data processing center or other central routing unit. For the purposes of this paragraph the term "type of financial institution" shall, notwithstanding the issuer of the financial institution's charter, mean either (1) banks; or (2) savings and loan associations; or (3) credit unions.

f. A representation and undertaking that the proposed central routing unit is directly connected to every data processing center that is directly connected to a satellite terminal located in this state, and that the proposed central routing unit will provide for direct connection in the future with any data processing center that becomes directly connected to a satellite terminal located in this state.

3. The administrator shall approve or disapprove an application for operation of a central routing unit within sixty days after receipt.

4. A central routing unit operating under the approval of the administrator shall be subject to examination by the administrator for the purpose of determining compliance with this chapter.

5. *a.* Effective July 1, 1987, a person owning or operating a central routing unit authorized under this section shall include public representation on any board setting policy for the central routing unit. Four or five public members shall be appointed to the board in the following manner:

(1) Two members shall be appointed by the superintendent of banking.

(2) One member shall be appointed by the superintendent of credit unions.

(3) One member shall be appointed by the superintendent of savings and loan associations.

(4) If an industrial loan company is connected to the central routing unit, one member shall be appointed by the superintendent of banking.

b. The superintendent of banking, superintendent of credit unions, and superintendent of savings and loan associations shall form a committee to set, in conjunction with the entity owning or operating the central routing unit, the term of office, the rate of compensation, and the rate of reimbursement for each public member. However, the public members shall be entitled to reasonable compensation and reimbursement from the board.

c. Each public member is entitled to all the rights of participation and voting as any other member of the board. The public members are to represent the interest of consumers and the business and agricultural communities in establishing policies for the central routing unit.

d. It is the intention of the general assembly that the ratio of public members to the overall membership of the board shall not be less than one public member for each seven members of the board. If the number of members on the board is increased, then the number of members appointed pursuant to paragraph "*a*" shall be increased to maintain the minimum ratio. In this event, a committee composed of the superintendent of banking, the superintendent of credit unions, and the superintendent of savings and loan associations shall appoint additional public members in order to maintain the minimum ratio.

e. An individual shall not be appointed as a public member pursuant to this subsection if the individual is a director of a financial institution or is directly employed by a financial institution doing business in this state.

87 Acts, ch 158, §13, 14 SF 461
 Subsection 2, NEW paragraph f
 NEW subsection 5

527.10 Confidentiality.

A satellite terminal, data processing center, or central routing unit shall not be operated in any manner to permit any person to obtain information concerning the account of any person with a financial institution, unless such information is essential to complete or prevent the completion of a transaction then being engaged in through the use of that facility.

A financial institution, data processing center, central routing unit, or other person shall not disseminate any information relating to the use of a multiple use terminal without the written authorization of the retailer on whose premises the terminal is located, or of the owner or operator of the terminal or the financial institution controlling the terminal. This section shall not, however, prohibit or restrict the use of information received in the processing, authorization, or rejection of a requested electronic funds transfer transaction, where such use is necessary or incidental to the processing, authorization, or rejection, or to reconciling disputes or resolving questions raised by a retailer, financial institution, consumer, or any other person regarding the transaction.

87 Acts, ch 158, §15 SF 461
NEW unnumbered paragraph 2

CHAPTER 533

CREDIT UNIONS

533.1 Purpose—administration—organization.

Definition and purpose. A credit union is hereby defined as a co-operative, nonprofit association, incorporated in accordance with the provisions of this chapter for the purpose of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members and of providing the opportunity for people to use and control their savings for their mutual benefit.

Administration. The superintendent shall have the supervisory and regulatory authority of all state chartered credit unions and shall be charged with the administration and execution of the laws of this state relating to credit unions. Subject to the approval of the credit union review board, the superintendent shall have power to adopt such rules as in the superintendent's opinion are necessary to properly and effectively safeguard the interests of depositors and shareholders of credit unions, and otherwise to carry out and enforce the provisions of this chapter.

Organization. Any seven residents of the state of Iowa may apply to the superintendent for permission to organize a credit union.

A credit union is organized in the following manner:

1. The applicants shall execute in duplicate articles of incorporation by the terms of which they agree to be bound. The articles shall state:

- a. The name and location of the proposed credit union.
- b. The names and addresses of the subscribers to the articles and the number of shares subscribed by each.
- c. The par value of the shares of the credit union shall be established by the board of directors. A credit union may have more than one class of shares.

2. Said applicants shall prepare and adopt bylaws for the general government of the credit union consistent with the provisions of this chapter, and execute the same in duplicate.

3. The articles and the bylaws, both executed in duplicate, shall be forwarded with a fee of ten dollars to the superintendent.

4. The superintendent shall, within thirty days of the receipt of said articles and bylaws, determine whether they conform with the provisions of this chapter, and whether or not the organization of the credit union in question would benefit its members and be consistent with the purposes of this chapter.

5. The superintendent shall thereupon notify the applicants of the decision. If the decision is favorable the superintendent shall issue a certificate of approval which shall be attached to the duplicate articles of incorporation and the superintendent shall return the same, together with the duplicate bylaws to the applicants.

6. The applicants shall thereupon file this duplicate of the articles of incorporation and the attached certificate of approval with the county recorder of the county within which the credit union is to have its principal place of business. The county recorder shall record and index the same and return it, with the recorder's certificate of record attached, to the superintendent for permanent record.

7. The applicants shall thereupon become and be a credit union, incorporated in accordance with the provisions of this chapter.

8. The original articles or amended articles may contain a provision which eliminates or limits the personal liability of a director, officer, or employee of the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, officer, or employee, provided that the provision does not eliminate or limit the liability of a director, officer, or employee for a breach of the director's, officer's, or employee's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the director, officer, or employee derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director, officer, or employee for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

In order to simplify the organization of credit unions, the superintendent shall cause to be prepared an approved form of articles of incorporation and a form of bylaws, consistent with this chapter which may be used by credit union incorporators for their guidance, and on written application of any seven residents of the state, shall supply them without charge with blank articles of incorporation and a copy of this form of suggested bylaws.

87 Acts, ch 212, §13 SF 471
NEW subsection 8

533.4 Powers.

A credit union shall have the following powers to:

1. Receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership.
2. Make loans to members for provident or productive purposes.
3. Make loans to a co-operative society or other organization having membership in the credit union.
4. Deposit in state and national banks.
5. Make investments in:
 - a. Time deposits in national banks and in state banks, the deposits of which are insured by the federal deposit insurance corporation.
 - b. Obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by the United States government or any agency thereof; or any trust or trusts established for investing directly or collectively in the same.
 - c. General obligations of the state of Iowa and any subdivision thereof.
 - d. Paid-up deposits of savings and loan associations, the deposits of which are insured by the federal savings and loan insurance corporation.
 - e. Purchase of notes of liquidating credit unions with the approval of the superintendent.
 - f. Shares and deposits in other credit unions.
 - g. Shares, stocks, loans, and other obligations or a combination thereof of an organization, corporation, or association, provided the membership or ownership, as the case may be, of the organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions and provided that the purpose of the organization, corporation, or association is primarily designed to provide services to credit unions, organizations of credit

unions, or credit union members. However, the aggregate amount invested pursuant to this subsection shall not exceed five percent of the assets of the credit union.

h. Obligations issued by federal land banks, federal intermediate credit banks, banks for cooperatives, or any or all of the federal farm credit banks.

i. Commercial paper issued by United States corporations as defined by rule.

6. Borrow money as hereinafter indicated.

7. Assess fines as may be provided by the bylaws.

8. Sue and be sued.

9. Make contracts.

10. Purchase, hold and dispose of property necessary and incidental to its operation provided, however, that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.

11. Exercise such incidental powers as may be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

12. Apply for share account and deposit account insurance which meets the requirements of this chapter and take all actions necessary to maintain an insured status.

13. Upon the approval of the superintendent, serve an employee group having an insufficient number of members to form or conduct the affairs of a separate credit union. There shall be no requirement for the existence of a common bond relationship between the said small employee group and the credit union effecting such service.

14. Deposit with a credit union which has been in existence for not more than a year an amount not to exceed twenty-five percent of the assets of the new credit union, but only one credit union may at any time make the deposit.

15. Acquire the conditional sales contracts, promissory notes or other similar instruments executed by its members, but the rate of interest existing on the instrument shall not exceed the highest rate charged by the acquiring credit union on its outstanding loans.

16. Sell, participate in, or discount the obligations of its members without recourse. Purchase the obligations of Iowa credit union members, provided the obligations meet the requirements of this chapter.

17. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged in providing and operating facilities through which a credit union and its members may engage, by means of either the direct transmission of electronic impulses to and from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union, in transactions in which such credit union is otherwise permitted to engage pursuant to applicable law.

18. Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union. Subject to the provisions of chapter 527, a credit union may utilize, establish or operate, alone or with one or more other credit unions, banks incorporated under the provisions of chapter 524 or federal law, savings and loan associations incorporated under the provisions of chapter 534 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the credit union may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace

or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any credit union.

19. Establish one or more offices other than its main office, subject to the approval and regulation of the superintendent, if such offices shall be reasonably necessary to furnish service to its membership. A credit union office may furnish all credit union services ordinarily furnished to the membership at the principal place of business of the credit union which operates the office. All transactions of a credit union office shall be transmitted daily to the principal place of business of the credit union which operates the office, and no current recordkeeping functions shall be maintained at a credit union office except to the extent the credit union which operates the office deems it desirable to keep at the office duplicates of the records kept at the principal place of business of the credit union. The central executive and official business functions of a credit union shall be exercised only at the principal place of business.

A credit union office shall not be opened without the prior written approval of the superintendent. Upon application by a credit union in the form prescribed by the superintendent, the superintendent shall determine, after notice and hearing, if the establishment of the credit union office is reasonably necessary for service to, and is in the best interests of, the members of the credit union.

20. Purchase insurance or make the purchase of insurance available for members.

21. A credit union may take a second mortgage on real property to secure a loan made by the credit union, pursuant to rules adopted by the superintendent.

22. Charge fees and penalties and apply them to income.

23. *a.* Act as agent of the federal government when requested by the secretary of the United States department of treasury; perform such services as may be required in connection with the collection of taxes and other obligations due the United States and the lending, borrowing and repayment of money by the United States; and be a depository of public money when designated for that purpose.

b. Act as agent of the state when requested by the treasurer of state; perform such services as may be required in connection with the collection of taxes and other obligations due the state and the lending, borrowing and repayment of money by the state; and be a depository of public money when designated for that purpose.

24. Receive public funds pursuant to chapter 453.

25. Engage in any activity authorized by the superintendent which would be permitted if the credit union were federally chartered and which is consistent with state law.

26. Pledge its assets to secure the deposit of public funds.

27. To provide indemnity for the director, officer, or employee in the same fashion that a corporation organized under chapter 496A could under section 496A.4A, provided that where section 496A.4A provides for action by shareholders the section is applicable to action by members of the credit union and where the section has reference to the corporation organized under chapter 496A, it is applicable to the association organized under this chapter.

87 Acts, ch 171, §20, 21 HF 658; 87 Acts, ch 212, §14 SF 471

Subsection 5, NEW paragraph i

Subsection 7 amended

NEW subsection 27

533.5 Membership.

The membership of a credit union consists of those persons in the common bond, duly admitted, who have paid any required one-time or periodic membership fee, or both, have subscribed to one or more shares, and have complied with the other requirements specified by the articles of incorporation and bylaws. To continue membership, a member must comply with any changes in the par value of the share. Credit union organization shall be available to groups of individuals who

have a common bond of association such as, but not limited to, occupation, common employer, or residence within specified geographic boundaries. Changes in the common bond may be made by the board of directors. If adopted as a policy by the board of directors of a credit union, members who cease to meet qualifications of membership may retain their credit union membership and all membership privileges. Organizations, incorporated or otherwise, may be members.

87 Acts, ch 171, §22 HF 658
Section stricken and rewritten

533.9 Directors and officers.

Within five days following the organization meeting and each annual meeting the directors shall elect from their own number a chairperson of the board, a vice chairperson, a secretary, a chief financial officer whose title shall be designated by the board of directors, a credit committee of not less than three members, and an auditing committee of not less than three members, and may also elect alternate members of the credit committee. The board may appoint an executive committee to act on its behalf when designated for that purpose. The directors have general management of the affairs of the credit union.

87 Acts, ch 171, §23, 24 HF 658
Unnumbered paragraph 1 amended
Former subsections 1 through 7, and unnumbered paragraph 2 stricken

533.11 Auditing committee.

The auditing committee shall:

1. Make or cause to be made an examination of the affairs of the credit union at least semiannually, including an audit of its books and, if the committee feels such action to be necessary, it shall call the members together after the audit and submit to them its report.

2. Make or cause to be made an annual report and submit it at the annual meeting of the members.

3. By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director, or member of committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote, the auditing committee may call a special meeting of the members to consider any matter submitted to it by said committee.

87 Acts, ch 171, §25 HF 658
Subsections 1 and 2 amended

533.34 Conversion of state credit union into federal credit union.

1. A state credit union may convert into a federal credit union with the approval of the administrator of the national credit union administration and by the affirmative vote of a majority of the credit union's members who vote on the proposal. This vote, if taken, shall be at a meeting called for that purpose and shall be in the manner prescribed by the bylaws.

2. The board of directors of the state credit union shall notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the administrator of the national credit union administration. The board of directors of the state credit union shall file with the superintendent appropriate evidence of approval of the conversion by the administrator of the national credit union administration and shall notify the superintendent of the date on which the conversion is to be effective.

3. Upon receipt of satisfactory proof that the state credit union has complied with all applicable laws of this state and of the United States, the superintendent shall issue a certificate of conversion which shall be filed and recorded in the county in which the state credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded.

87 Acts, ch 171, §26 HF 658
Subsection 1 amended

533.38 Corporate central credit union.

A corporate central credit union may be established. Credit unions organized under this chapter, the Federal Credit Union Act, or any other credit union act and credit union organizations may be members. In addition, regulated financial institutions, nonprofit organizations, and cooperative organizations may be members to the extent and manner provided for in the bylaws of the corporate central credit union. The corporate central credit union shall have all the powers, restrictions, and obligations imposed upon, or granted to a credit union under this chapter, except that the corporate central credit union may exercise any of the following additional powers subject to the adoption of rules by the superintendent pursuant to chapter 17A and with the prior written approval of the superintendent:

1. Make loans and extend lines of credit to its members.
2. Impose fees or penalties upon its members and apply them to income.
3. Make available share draft accounts and permit the owners of the accounts to make withdrawals by negotiable or other transferable instruments or other orders for the purpose of making transfers to third parties.
4. Borrow any amount from any source.
5. Invest in or purchase obligations or securities or other designated investments to the same extent authorized for other supervised financial institutions.
6. Invest in or acquire shares, stocks, or other obligations of an organization providing services which are associated with the operations of credit unions. However, the aggregate amount invested pursuant to this subsection shall not exceed fifty percent of the total of all reserves and undivided earnings of the corporate credit union.
7. Buy or sell investment securities and corporate bonds which are evidences of indebtedness. However, the purchase or sale is limited to marketable obligations of a corporation or state or federal agency issued without recourse.
8. Sell all or part of its assets to another central or corporate credit union and assume the liabilities of a selling central or corporate credit union if the action is approved by the majority vote of the board of directors at a meeting called for that purpose.
9. Invest in the shares or deposits of another similarly organized corporate credit union, central credit union, or central liquidity facility.
10. Make other investments approved by the superintendent.
11. The corporate central credit union shall not be required to transfer to its legal reserve more than five percent of its net income for the year.

87 Acts, ch 171, §27 HF 658
Unnumbered paragraph 1 amended

533.48 Investment in banks or savings and loan associations.

1. *Investments in banks.* A credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a bank.
2. *Investment in savings and loans.* A credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a state savings and loan association.
3. *Findings required.* The superintendent shall not grant an approval under subsection 1 or 2, except after making one of the following findings:
 - a. Based upon a preponderance of the evidence presented, the proposed investment will not have the immediate effect of significantly reducing competition between depository financial institutions located in the same community as the institution whose shares would be acquired.
 - b. Based upon a preponderance of the evidence presented, the proposed investment would have an anticompetitive effect as described in paragraph "a",

but other factors, specifically cited, outweigh the anticompetitive effect so that there would be a net public benefit as a result of the investment.

4. *Competition preserved.* The subsequent liquidation of a bank or state savings and loan association whose shares are acquired under this section shall not prevent the subsequent incorporation of another bank or savings and loan association in the same community, and the superintendent of banking shall not find the liquidation of such a bank to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, and the superintendent of savings and loan associations shall not find the liquidation of such a savings and loan association to be grounds for disapproving the incorporation of another savings and loan association in the same community under chapter 534.

87 Acts, ch 171, §28 HF 658
Effective May 29, 1987
NEW section

533.49 and 533.50 Reserved.

533.67 Expenses of the credit union division—fees.

All expenses required in the discharge of the duties and responsibilities imposed upon the credit union division, the superintendent, and the credit union review board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the fund established in this section. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other money received by the superintendent to the treasurer of state within the time required by section 12.10. The treasurer of state shall hold these funds in a credit union revolving fund that shall be established in the name of the superintendent for the payment of the expenses of the division. This fund is subject at all times to the warrant of the department of revenue and finance, drawn upon written requisition of the superintendent or the superintendent's designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the division. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the credit union review board. No transfers shall be made from the general fund of the state or any other fund for the payment of the expenses of the division. No part of the funds held by the treasurer of state for the account of the superintendent shall be transferred to the general fund of the state or any other fund, except as follows: Thirty thousand dollars each fiscal year shall be transferred to the general fund of the state. The amount shall be considered as one of the costs of the division. The funds held by the treasurer of state for the account of the superintendent shall be invested by the treasurer of state and the income derived from these investments shall be credited to the general fund of the state.

The authority to modify allotments provided in section 8.31 shall not apply to funds appropriated from the fund created in this section and held for the superintendent.

The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

87 Acts, ch 234, §436 HF 671
Section amended

CHAPTER 534

SAVINGS AND LOAN ASSOCIATIONS

534.103 General powers.

Every such association shall have the following general powers:

1. *General corporate power.* To sue and be sued, complain and defend in any court of law or equity; to purchase, acquire, hold, and convey real and personal estate consistent with its objects and powers; to mortgage, pledge, or lease any real or personal estate owned by the association and to authorize such pledgee to repledge same; to take property by gifts, devise or bequest; to have a corporate seal, which may be affixed by imprint, facsimile, or otherwise; to appoint officers, agents, and employees as its business shall require and allow them suitable compensation; to provide for life, health and casualty insurance for its officers and employees and to adopt and operate reasonable bonus plans and retirement benefits for such officers and employees to enter into payroll savings plans; to adopt and amend bylaws; to insure its accounts with the federal savings and loan insurance corporation and qualify as a member of a federal home loan bank; to become a member of, deal with, or make contributions to any organization to the extent that such organization assists in furthering or facilitating the association's purposes or powers and to comply with conditions of membership; to accept savings as provided in this chapter together with such other powers as are otherwise expressly provided for in this chapter, together with such implied powers as are reasonably necessary for the purpose of carrying out the express powers granted in this chapter.

2. *Fiscal agent.* Any such association which is a member of a federal home loan bank shall have power to act as fiscal agent of the United States and, when designated for the purpose by the secretary of the treasury, it shall perform under such regulations as the secretary may prescribe all such reasonable duties as fiscal agent of the United States as the secretary may require, and shall have power to act as agent for any United States government instrumentality. An association may also handle travelers checks and money orders.

3. *Lock boxes.* Any association may own, rent to its members, lock boxes for storage or safekeeping of securities and valuables.

4. *Power to borrow.* Except as provided by its articles of incorporation, an association may borrow not more than an aggregate amount equal to its savings liability on the date of borrowing. A subsequent reduction of savings liability shall not affect in any way outstanding obligations for borrowed money. All loans and advances may be secured by property of the association. In addition to the above unsecured or secured borrowing, an association may issue notes, bonds, debentures and other obligations or securities approved by the superintendent, and if authorized by the regulations of the federal home loan bank. However, the obligations and securities are subject to the priority of the rights of the owners of the savings and deposits of the association.

5. *Service corporations.* Any association may organize and own, alone or with any other similar corporation, a service corporation for the mutual good of the associations. The superintendent shall have the right to examine service corporations.

6. *Limited trust powers.* An association incorporated under this chapter may act as trustee for trusts which are created or organized in the United States, and which form part of a stock bonus, pension, or profit sharing plan which qualifies for special tax treatment under section 401(d) or subsection (a) of section 408 of the Internal Revenue Code of 1954, as amended, or as trustee with no active fiduciary duties, if the funds of the trust are invested only in savings accounts or deposits in the association or in obligations or securities issued by the association. All funds held in such a fiduciary capacity by an association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subsection.

The superintendent is authorized to grant by special permit to an association the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity. However, this authority is available only for periods of time

when federally chartered savings and loan associations operating in this state are granted similar authority, and the state authorization is subject to the rights and limitations established in rules adopted by the superintendent, which shall be consistent with the rights and limitations for federally chartered associations engaged in this type of activity.

7. *Tax and loan accounts.* To act as depository for receipt of payments of federal or state taxes and loan funds from persons other than the state or subdivisions, agencies or instrumentalities of the state, and satisfy any federal or state statutory or regulatory requirements in connection therewith, including pledging of assets as collateral, payment of earnings at prescribed rates and, notwithstanding any other provision of this chapter, issuing such accounts subject to the right of immediate withdrawal.

8. *Leasing of personal property.* To acquire, upon the specific request of and for the use of a customer, and lease, personal property pursuant to a binding arrangement for the leasing of the property to the customer upon terms requiring payment to the association, during the minimum period of the lease, of rentals which in the aggregate, when added to the estimated tax benefits to the association resulting from the ownership of the leased property plus the estimated residual market value of the leased property at the expiration of the initial term of the lease, will be at least equal to the total expenditures by the association for, and in connection with, the acquisition, ownership, maintenance, and protection of the property. A lease made under authority of this section shall have the prior approval of the superintendent or be made pursuant to personal property lease guidelines approved by the superintendent for use by the lessor association or pursuant to a personal property lease guideline rule of general applicability for use by all associations.

9. *Electronic transactions.* Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association. Subject to the provisions of chapter 527, an association may utilize, establish or operate, alone or with one or more other associations, banks incorporated under the provisions of chapter 524 or federal law, credit unions incorporated under the provisions of chapter 533 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the association may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any association or other person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any association.

10. *Automatic authorization.* Any association may have the right to participate in any new or additional powers or activities hereafter granted to such association under this chapter immediately upon the effective date of such additional authority, if authorized by the articles of incorporation of such association.

534.107 Operating expenses.

The operating expense of an association in any one year shall not exceed three percent of the association's average assets during that year without the written approval of the superintendent.

87 Acts, ch 171, §30 HF 658
Section amended

534.111 Rights of federal associations—reciprocity.

Every federal savings and loan association incorporated under the provisions of Home Owners' Loan Act of 1933 [12 U.S.C. §1461-1468], as now or hereafter amended, and the holders of share accounts issued by any such association shall have all the rights, powers, and privileges and shall be entitled to the same exemptions and immunities, as savings and loan associations organized under the laws of this state and members thereof are entitled.

Every association organized under this chapter has all the rights, powers, and privileges not in conflict with the laws of this state, which are conferred upon federal savings and loan associations by the Home Owners' Loan Act of 1933, 12 U.S.C. §1464, and conferred by regulations adopted by the federal home loan bank board and the federal savings and loan insurance corporation.

87 Acts, ch 171, §31 HF 658
Unnumbered paragraph 2 amended

534.112 Regulatory capital.

An association shall maintain regulatory capital in the amount required by regulations of the federal savings and loan insurance corporation. For the purpose of this section, "*regulatory capital*" means the sum of all reserve accounts (except specific reserves established to offset actual or anticipated losses), undivided profits, surplus, capital stock, and any other nonwithdrawable accounts.

87 Acts, ch 171, §32 HF 658
Effective May 29, 1987
NEW section

534.207 Commitment to residential loans.

1. *Commitment.* As an annual average, based on monthly computations, an association shall hold at least sixty percent of its assets in the following types of assets:

a. Loans secured by liens or claims on residential real estate, participation interests in groups of loans secured by liens or claims on residential real estate, securities that are secured by groups of loans secured by liens or claims on residential real estate, or property improvement loans for the making of improvements upon residential real property, or a combination of these.

b. Cash.

c. Obligations of the United States or of a state or political subdivision of a state, and stock or obligations of a corporation which is an instrumentality of the United States or of a state or political subdivision of a state, but not including obligations the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1954.

d. Certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations.

e. Loans secured by a deposit or share of a member.

f. Property acquired through the liquidation of default loans.

g. Property used by the association in the conduct of its business under this chapter.

2. *Failure to meet commitment.* If, upon examination, the superintendent of savings and loan associations determines that an association has failed to meet the requirements of subsection 1 for any two of its preceding five fiscal years, the association shall be so notified in writing, with a copy of the notice to the

superintendent of banking, and the association shall within ninety days following receipt of the notice do one of the following:

a. Establish to the satisfaction of the superintendent that at least sixty percent of the current amount of its assets are held in the types of assets referred to in subsection 1. If the association subsequently fails to meet the requirements of subsection 1 during any one of the three fiscal years following the fiscal year in which the second violation in five years occurred, then the association shall within ninety days following receipt of a notice of this violation take one of the actions specified in paragraph "b", "c", "d", or "e".

b. File a plan of merger to merge with another state association whose assets are such that the two associations would have met the requirements of subsection 1 on a consolidated basis during at least four of the five preceding years.

c. File a plan of merger with a federal association or a bank under which the resulting organization is not a state association.

d. File a plan of conversion to become a federal association or a bank.

e. File a plan of conversion that provides both for conversion to a stock association and for the immediate conversion of the resulting stock association to a bank.

3. *Failure to resolve problem.* If an association fails to take one of the actions required by subsection 2, or fails to complete the plan of merger or conversion within nine months after receiving the notice specified in subsection 2, the superintendent shall appoint a conservator to operate the association in conformance with subsection 1 or a receiver to liquidate the association.

87 Acts, ch 171, §33 HF 658
Subsection 1, paragraph a amended

534.209 Commercial lending and accounts.

1. An association shall not hold more than forty percent of its assets in commercial loans and consumer loans as an annual average based on monthly computations.

2. An association may accept a commercial NOW account. For the purposes of this subsection, a "commercial NOW account" is a NOW account, as authorized by section 534.301, subsection 3, for a commercial, corporate, business, or agricultural entity.

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

a. "Commercial loan" means a loan to a person borrowing money for a business or agricultural purpose.

b. "Business purpose" means a loan to a for-profit entity, or a for-profit activity, including but not limited to a commercial, service, or industrial enterprise carried on for profit, or an investment activity.

c. "Agricultural purpose" means as defined in section 535.13.

d. "Commercial loan" does not include a loan secured by an interest in real estate for the purpose of financing the acquisition of real estate or the construction of improvements on real estate. In determining which loans are "commercial loans" the rules of construction stated in section 535.2, subsection 2, paragraph "b", apply.

4. For the purposes of this section, a lease of personal property is treated as a commercial loan if a loan to the lessee to acquire the property would have been a commercial loan.

87 Acts, ch 171, §34 HF 658
Section stricken and rewritten

534.215 False statement for credit.

A person who knowingly does either of the following is guilty of a fraudulent practice:

1. Makes or causes to be made, directly or indirectly, a false statement in writing with the intent that the false statement shall be relied upon by an

association for the purpose of procuring the delivery of property, the payment of cash, or the receipt of credit in any form, for the benefit of the person or of any other person in which the person is interested or for whom the person is acting.

2. Procures the delivery of property, the payment of cash, or the receipt of credit in any form, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of the person, or any other person in which the person is interested or for whom the person is acting, if the person knew that the association relied or would rely upon the false written statement.

87 Acts, ch 171, §35 HF 658
Effective May 29, 1987
NEW section

534.307 Dividends—service fee.

After making such provisions for absorbing immediate and possible future losses, the board of directors of such association shall annually, or at such other intervals as the board of directors may determine, declare and apportion as a dividend to members, according to its articles of incorporation, such portion of the association's net profits as it may deem available, and as authorized under this chapter. Members shall participate in dividends in proportion to their respective investments therein. Dividends for a particular month may be paid on sums invested by a member by the tenth day of that month or by such later date of that month as is authorized by the superintendent, which shall in no event be later than the twentieth day of a particular month. If the tenth day of said month or other authorized date falls on a Sunday, holiday or another business day on which the particular association is normally closed, then money received by the next business day may earn dividends from the first of that month. The board of directors may also devise other methods of paying dividends, including payment of dividends from date of investment to date of withdrawal, subject to the approval of the superintendent. Additionally a service fee not to exceed one dollar per dividend period may be charged to a member's account when no activity has taken place in said account for the eight preceding quarterly periods and the principal of such account is less than fifty dollars.

87 Acts, ch 171, §36 HF 658
Subsection 2 stricken

534.408 Supervisory fees.

1. *Payable to division.* Associations shall pay fees by delivering to the superintendent a check payable to the savings and loan division of the department of commerce. All fees collected under this chapter shall be deposited with the treasurer of state in a separate fund to be known as the savings and loan revolving fund, except eleven thousand dollars each fiscal year shall be transferred to the general fund of the state. The amount shall be considered as one of the costs of the savings and loan division. All expenses necessary to carry out this chapter shall be paid from the savings and loan revolving fund and appropriated by the general assembly from the fund.

The authority to modify allotments provided in section 8.31 shall not apply to funds appropriated from the savings and loan fund.

2. *Incorporation fee.* Simultaneously with the filing with the supervisor of a certificate of incorporation, the corporation shall pay an incorporation fee of one hundred dollars.

3. *Change of location or change of name.* There shall accompany each application to the supervisor for leave to change the location of the home office or to change the name of the association a fee of fifty dollars.

4. *Supervision and examination fee.* At the time of filing its annual report each association shall pay to the auditor of state, an annual filing fee of fifty dollars. The supervisor shall assess against any association the actual and necessary expenses incidental to any examinations, or to supervision, or to any special audit

made pursuant to an order of the supervisor acting under authority of this chapter. The annual assessment to each association shall also include a fair proportion of the cost of administration of the savings and loan division.

5. *Merger fee.* At the time of filing with the supervisor any merger agreement, the association proposing to so merge shall submit therewith a fee of one hundred fifty dollars, which fee shall be paid in equal parts by the associations parties to the proposed merger.

6. *For reorganization, transfer of assets, and dissolution.* There shall accompany every proposed plan of reorganization, every proposal for the transfer of assets in bulk, and every certificate of dissolution, filed with the supervisor for approval, a fee of fifty dollars.

7. *For approval of supervisor.* The supervisor is authorized, in the supervisor's discretion, to charge a fee of not exceeding ten dollars upon each application for the supervisor's approval, as provided by this chapter.

87 Acts, ch 234, §437 HF 671
Subsection 1 amended

534.501 Articles of incorporation.

1. *Original articles.* The original articles of incorporation of an association shall set forth:

- a. The name of the association.
- b. Whether the association is organized as a mutual association or a stock association.
- c. That the association will operate under this chapter.
- d. The period of duration if for a limited period, but in the absence of any statement in the articles an association shall have perpetual duration.
- e. The officer or officers authorized to sign instruments pertaining to real estate.
- f. Whether or not the association will have a corporate seal, and whether such seal must be affixed to instruments pertaining to real estate.
- g. If a stock association, the information specified in section 496A.49, subsections 4, 5, 6, and 7.
- h. Any other provision not inconsistent with this chapter.
- i. The person to whom the certificate of incorporation should be mailed by the secretary of state after filing.
- j. The address of its registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its registered agent or agents at such address.
- k. The name and address of each incorporator.
- l. The name and address and initial term of office of each member of the initial board of directors.

m. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders or members, for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the association or its stockholders or members, for an act or omission not in good faith or which involves intentional misconduct or knowing violation of the law, or for a transaction from which the director derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

2. *Articles may omit powers.* It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

3. *Restated articles.* Restated articles of incorporation shall set forth the information specified in paragraphs "a", "b", "c", "d", "e", "f", "g", "h", "i", "j", and "m" of subsection 1.

4. *Amendment procedure.* The procedure for amending articles of incorporation or adopting restated articles for mutual associations is that specified in section 504A.35, and for stock associations it is that specified in sections 496A.56 and 496A.57.

5. *Effective date.* Original articles, amendments, and restatements are effective on the date they are filed with the secretary of state, or on such later effective date as is stated therein. The secretary of state shall not accept any of these documents for filing unless it has been approved by the superintendent.

87 Acts, ch 212, §15, 16 SF 471
Subsection 1, NEW paragraph m
Subsection 3 amended

534.505 Incorporating an association.

1. *Plan of incorporation.* One or more persons may petition for approval of a plan of incorporation for an association by forwarding to the superintendent the following:

- a. The proposed original articles of incorporation.
- b. The proposed original bylaws.
- c. An application for approval of each proposed office.
- d. Other information the superintendent requires.

2. *Procedures.* If the superintendent approves the plan of incorporation, the superintendent shall note the approval on the original articles, and the original articles shall be filed with the secretary of state.

3. *Certificate of operation.* A corporation shall not operate as an association under this chapter until it has received a certificate of operation from the superintendent. The superintendent shall not issue a certificate of operation to the association until approved articles and bylaws have been adopted, the superintendent has received satisfactory proof that the corporation will be an insured association before receiving any money in savings accounts, and the interests of the public and members have been adequately protected.

87 Acts, ch 171, §37 HF 658
Subsection 4 stricken

534.605 Transactions of officers, directors, employees.

It shall be unlawful for an officer, director or employee of an association:

1. To solicit, accept or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

2. To make a real estate loan or real estate contract to a director, officer or employee of the association, or to any attorney or firm of attorneys, regularly serving the association in the capacity of attorney at law, or to any partnership in which any such director, officer, employee, attorney or firm of attorneys has any interest, and no real estate loan or real estate contract shall be made to any corporation in which any of such parties are stockholders, except that with the prior approval of its board of directors a real estate loan or real estate contract may be made to a corporation in which no such party owns more than fifteen percent of the total outstanding stock and in which the stock owned by all such parties does not exceed twenty-five percent of the total outstanding stock: Provided, that nothing herein shall prohibit an association from making loans pursuant to sections 534.202 and 534.208 and loans on the security of a first lien on the home property or mobile home owned and occupied by a director, officer or employee of an association, or by an attorney or member of a firm of attorneys regularly serving the association in the capacity of attorney at law upon a two-thirds vote of the directors, the interested director not voting.

3. To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings liability or other indebtedness issued by the association or other assets at less than their fair market value.

4. Any association operating under this chapter shall have the power to indemnify any present or former director, officer or employee in the manner and in the instances authorized in section 496A.4A. If the association is a mutual association, the references in section 496A.4A to stockholder shall be deemed to be references to members.

87 Acts, ch 212, §17 SF 471
Subsection 4 amended

534.607 Indemnification.

Except as otherwise provided in section 534.602, section 496A.4A applies to associations incorporated under this chapter.

87 Acts, ch 212, §18 SF 471
NEW section

534.702 Admission of foreign associations.

1. *Application.* If a foreign association desires to transact business within this state, it shall furnish to the superintendent a certified copy of its articles of incorporation, or charter and bylaws, and a certified copy of the state laws under which it is organized, together with a report for the year next preceding, verified by its president, vice president, secretary, and at least three directors, which report shall show:

- a. The amount of its authorized savings liability and the par value of its shares, if any.
- b. The increase in savings liability.
- c. The withdrawal from savings liability during the year.
- d. The amount of savings liability in force at the end of the year.
- e. A detailed statement of all funds received during the year and all disbursements.
- f. The salaries paid each of its officers.
- g. A detailed statement of its assets and liabilities at the end of the year and their nature.
- h. A reconciliation of its net worth for the current year to the date of application and the previous three fiscal years.
- i. A detailed description of the anticipated types of business to be performed within the state.
- j. Any additional information required of domestic associations under section 534.505, subsection 1.

As used in this section, to transact business means to have an office, agency or agent in this state.

2. *Approval by supervisor—certificate of authority.* If upon receipt of the report the supervisor finds from a review of the report that the association is properly managed, that its financial condition is satisfactory, and that its business is conducted upon a safe and reliable plan and one equitable to its members, the supervisor shall issue a like certificate of authority, signed by the auditor of state as in the case of domestic associations.

3. *Conditions attending approval.* A foreign association shall not be authorized to do business in this state if the foreign association's articles of incorporation are not found by the supervisor to be in substantial compliance with the laws of this state, and affording equal security and protection to its members.

4. *Deposit by foreign association.* Before the supervisor issues a certificate to a foreign association, it shall deposit with the auditor of state two hundred fifty thousand dollars, either in cash, or bonds of the United States or of the state of Iowa, or of a county or municipal corporation of the state, or notes secured by first mortgages on real estate, or a like amount in other security which is satisfactory to the auditor of state.

The foreign association may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with this chapter. Upon the approval of the auditor, it may also exchange the securities for other securities of equal value.

5. *Liability of deposit.* The deposit made with the auditor of state shall be held as security for all claims of resident members of the state against said association, and shall be liable for all judgments or decrees thereon, and subject to the payment of the same.

6. *Auditor of state as process agent.* Such foreign associations shall also file with the auditor of this state a duly authorized copy of a resolution adopted by the board of directors of such association, stipulating and agreeing that, if any legal process or notice affecting such association be served on the said state auditor, and a copy thereof be mailed, postage prepaid, by the party procuring and issuing the same, or the party's attorney, to said association, addressed to its home office, then such service and mailing of such process or notice shall have the same effect as personal service on said association within this state.

7. *Manner of service.* When proceedings have been commenced against, or affecting any foreign building and loan or savings and loan association, as contemplated in subsection 6, and notice has been served upon the auditor of the state, the same shall be by duplicate copies, one of which shall be filed in the auditor's office, and the other mailed by the auditor, postage prepaid, to the home office of such association.

8. *Amendment to articles.* Within ten days after the adoption of an amendment to its articles of incorporation or bylaws, a foreign association shall file a duly certified copy of the amendment with the supervisor.

9. Subject to the laws and regulations of the United States, a foreign association transacting business within this state is subject to the provisions of this chapter and is subject to the supervision of the superintendent as to its operations in this state. Notwithstanding subsection 2 of section 534.102, the term "association" or "state association" in this chapter shall include a foreign association and any foreign association which is a party to a plan of merger under section 534.511 as to its operations in this state.

87 Acts, ch 171, §38 HF 659
Subsection 9 effective May 29, 1987
NEW subsection 9

CHAPTER 535

MONEY AND INTEREST

535.3 Interest on judgments and decrees.

Interest shall be allowed on all money due on judgments and decrees of courts at the rate of ten percent per year, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding the maximum applicable rate permitted by the provisions of section 535.2, which rate must be expressed in the judgment or decree. The interest shall accrue from the date of the commencement of the action.

This section does not apply to the award of interest for judgments and decrees subject to section 668.13.

87 Acts, ch 157, §1 SF 482
Second paragraph applies to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, §11 SF 482
NEW unnumbered paragraph 2

535.16 Delivery of copies of debt documents.

A lender or other secured party shall provide to a debtor, at the time a document relating to a debt is signed, a copy of the document signed by the debtor. Receipt

of a copy required by this section may be acknowledged on the face of the document or on a separate acknowledgement of receipt.

A lender or other secured party shall provide to a debtor copies of all documents signed by the debtor relating to the debt at any other time, upon request, for a charge that shall not exceed the reasonable cost of copying the document.

87 Acts, ch 163, §1 HF 426
Section amended

CHAPTER 536A

IOWA INDUSTRIAL LOAN LAW

536A.12 Continuing license—annual fee—change of location.

Each such license remains in full force and effect until surrendered, revoked, or suspended. A licensee shall, on or before the second day of January, pay to the superintendent the sum of fifty dollars as an annual license fee for the succeeding calendar year. When a licensee changes its place of business from one location to another in the same city it shall at once give written notice to the superintendent who shall attach to the license in writing the superintendent's record of the change and the date of the change, which is authority for the operation of the business under that license at the new place of business.

87 Acts, ch 11, §1, 2 HF 265
Unnumbered paragraph 1 amended
Unnumbered paragraph 2 stricken

536A.15 Examination of licensees.

The superintendent or the superintendent's duly authorized representative shall, at least once each year without previous notice, examine the books, accounts, and records of each licensee engaged in the industrial loan business as defined by this chapter. A licensee issuing senior debt to the general public shall be audited at the expense of the licensee by a certified public accountant licensed to practice in the state of Iowa. A licensee not issuing senior debt to the general public may provide an audited statement of the licensee's parent corporation which includes the Iowa licensee. After receiving such an audit or audited statement, the superintendent may make further examination of the licensee as the superintendent deems necessary. A record of each examination shall be kept in the superintendent's office. The examinations and reports, and other information connected with them, shall be kept confidential in the office of the superintendent and shall not be subject to publication or disclosure to others except as in this chapter provided. Any evidence of criminal acts committed by officers, directors, or employees of an industrial loan company shall be reported by the superintendent to the proper authorities. The licensee shall be charged and shall pay the actual costs of the examination.

87 Acts, ch 11, §3 HF 265
Section amended

CHAPTER 537

CONSUMER CREDIT CODE

537.1301 General definitions.

As used in this chapter, unless otherwise required by the context:

1. "*Actuarial method*" means the method of allocating payments made on a debt between the amount financed and the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount

financed. The administrator may adopt rules not inconsistent with the Truth in Lending Act further defining the term and prescribing its application.

2. "*Administrator*" means the administrator designated in section 537.6103.

3. "*Agreement*" means the oral or written bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

4. "*Amount financed*" means:

a. In the case of a sale, the cash price of the goods, services, or interest in land, plus the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in, less the amount of any down payment whether made in cash or in property traded in, plus additional charges if permitted under paragraph "c".

b. In the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge under subsection 20, paragraph "b," subparagraph 3, plus additional charges if permitted under paragraph "c" of this subsection.

c. In the case of a sale or loan, additional charges permitted under section 537.2501, to the extent that payment is deferred, that the charge is not otherwise included, in the amount permitted respectively in paragraph "a" or "b", and that the charge is authorized by and disclosed to the consumer as required by law.

5. "*Billing cycle*" means the time interval between periodic billing statement dates.

6. "*Card issuer*" means a person who issues a credit card.

7. "*Cardholder*" means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance or use of the card to or by another person.

8. "*Cash price*" of goods, services, or an interest in land means, except in the case of a consumer rental purchase agreement, the price at which they are sold by the seller to cash buyers in the ordinary course of business, and may include the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and taxes to the extent imposed on a cash sale of the goods, services, or interest in land.

9. *Conspicuous*. A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether or not a term or clause is conspicuous is for decision by the court.

10. "*Consumer*" means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

11. "*Consumer credit transaction*" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease, or a consumer rental purchase agreement.

12. *Consumer credit sale*.

a. Except as provided in paragraph "b", a consumer credit sale is a sale of goods, services, or an interest in land in which all of the following are applicable:

(1) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

(2) The buyer is a person other than an organization.

(3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

b. A "*consumer credit sale*" does not include:

(1) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(2) A sale of an interest in land if the finance charge does not exceed twelve percent per year calculated on the actuarial method on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) A consumer rental purchase agreement as defined in section 537.3604.

13. *Consumer lease.*

a. Except as provided in paragraph "b", a consumer lease is a lease of goods in which all of the following are applicable:

(1) The lessor is regularly engaged in the business of leasing.

(2) The lessee is a person other than an organization.

(3) The lessee takes under the lease primarily for a personal, family, or household purpose.

(4) The amount payable under the lease does not exceed twenty-five thousand dollars.

(5) The lease is for a term exceeding four months.

b. A consumer lease does not include a consumer rental purchase agreement as defined in section 537.3604.

14. *Consumer loan.*

a. Except as provided in paragraph "b", a "consumer loan" is a loan in which all of the following are applicable:

(1) The person is regularly engaged in the business of making loans.

(2) The debtor is a person other than an organization.

(3) The debt is incurred primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) The amount financed does not exceed twenty-five thousand dollars.

b. A "consumer loan" does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a seller credit card.

(2) A debt which is secured by a first lien on real property and which is incurred primarily for the purpose of acquiring that real property, or refinancing a contract for deed to that real property, or constructing on that real property a building containing one or more dwelling units.

(3) A loan financed by the Iowa finance authority and secured by a lien on land.

(4) A consumer rental purchase agreement as defined in section 537.3604.

c. In determining which loans are consumer loans under this subsection the rules of construction stated in this paragraph shall be applied:

(1) A debt is incurred primarily for the purpose to which a majority of the loan proceeds are applied or are designated by the debtor to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are incurred for the same purposes and in the same proportion as the principal of the loan refinanced or paid.

(3) Loan proceeds used to pay a prior loan by a different borrower are incurred for the new borrower's purposes in agreeing to pay the prior loan.

(4) The assumption of a loan by a different borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) The provisions of this paragraph shall not be construed to modify or limit the provisions of section 535.8, subsection 2, paragraph "c" or "e."

15. "*Credit*" means the right granted by a person extending credit to a person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

16. "*Credit card*" means a card or device issued under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property or purchasing services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons. A transaction is "pursuant to a credit card" if credit is obtained according to the terms of the arrangement by

transmitting information contained on the card or device orally, in writing, by mechanical or automated methods, or in any other manner. A transaction is not "pursuant to a credit card" if the card or device is used solely to identify the cardholder and credit is not obtained according to the terms of the arrangement.

17. "*Creditor*" means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his assignor. In the case of credit granted pursuant to a credit card, the "creditor" is the card issuer and not another person honoring the credit card.

18. "*Earnings*" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

19. *Finance charge.*

a. Except as otherwise provided in subsection "b", "finance charge" means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable:

(1) Interest or any amount payable under a point, discount or other system of charges, however denominated, except that with respect to a consumer credit sale of goods or services a cash discount of five percent or less of the stated price of goods or services which is offered to the consumer for payment by cash, check or the like either immediately or within a period of time, is not part of the finance charge for the purpose of determining maximum charges pursuant to section 537.2401. A cash discount permitted by this subparagraph is not part of the finance charge for the purpose of determining compliance with section 537.3201 if it is properly disclosed as required by the Truth in Lending Act as amended to and including July 1, 1982 and regulations issued pursuant to that Act prior to July 1, 1982.

(2) Time price differential, credit service, service, carrying or other charge, however denominated.

(3) Premium or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(4) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

b. "*Finance charge*" does not include:

(1) Charges as a result of default or delinquency if made for actual unanticipated late payment, delinquency, default, or other like occurrence unless the parties agree that these charges are finance charges. A charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account which is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or at a specified amount is required when billed, and in the ordinary course of business the consumer is permitted to continue to have purchases or other debts debited to the account after the imposition of the charge.

(2) Additional charges as defined in section 537.2501, or deferral charges as defined in section 537.2503.

(3) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(4) Lease payments for a consumer rental purchase agreement, or charges specifically authorized by this chapter for consumer rental purchase agreements.

20. *"Gift certificate"* means a merchandise certificate conspicuously designated as a gift certificate, and purchased by a buyer for use by a person other than the buyer.

21. a. *"Goods"* includes, but is not limited to:

- (1) "Goods" as described in section 554.2105, subsection 1.
- (2) Goods not in existence at the time the transaction is entered into.
- (3) Things in action.
- (4) Investment securities.
- (5) Mobile homes regardless of whether they are affixed to the land.
- (6) Gift certificates.

b. *"Goods"* excludes money, chattel paper, documents of title, instruments and merchandise certificates other than gift certificates.

22. *"Insurance premium loan"* means a consumer loan that is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer, is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract, and contains an authorization to cancel the policy or contract financed.

23. *"Lender"* means a person who makes a loan or, except as otherwise provided in this Act, a person who takes an assignment of a lender's right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

24. *"Lender credit card"* means a credit card issued by a lender.

25. a. *"Loan"* means any of the following, except as provided in paragraph "b":

(1) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor.

(2) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately.

(3) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or his assignees.

(4) The creation of debt by a cash advance to a debtor pursuant to a seller credit card.

(5) The forbearance of debt arising from a loan.

b. *"Loan"* does not include:

(1) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a seller credit card.

(2) The forbearance of debt arising from a sale or lease.

26. *"Merchandise certificate"* means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services. Sale of a merchandise certificate on credit is a credit sale beginning at the time the certificate is redeemed.

27. *"Official fees"* means:

a. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating, or satisfying a security interest related to a consumer credit transaction.

b. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph "a" which would otherwise be payable.

28. "*Open-end credit*" means an arrangement, other than a consumer rental purchase agreement, pursuant to which all of the following are applicable:

a. A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card.

b. The amounts financed and the finance and other appropriate charges are debited to an account.

c. The finance charge, if made, is computed on the account periodically.

d. Either the consumer has the privilege of paying in full or in installments, or the transaction is a consumer credit transaction solely because a delinquency charge or the like is treated as a finance charge pursuant to subsection 19, paragraph "b", subparagraph (1) of this section or the creditor otherwise periodically imposes charges computed on the account for delaying payment of it and permits the consumer to continue to purchase or lease on credit.

29. "*Organization*" means a corporation, government or governmental subdivision or agency, trust, estate, co-operative, or association.

30. "*Payable in installments*" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment excluding the down payment, a transaction is "payable in installments".

31. "*Person*" means:

a. A natural person, partnership, or an individual.

b. An organization.

32. a. "*Person related to*" with respect to a natural person or an individual means any of the following:

(1) The spouse of the individual.

(2) A brother, brother-in-law, sister, or sister-in-law of the individual.

(3) An ancestor or lineal descendant of the individual or the individual's spouse.

(4) Any other relative, by blood or marriage, of the individual or the individual's spouse, if the relative shares the same home with the individual.

b. "*Person related to*" with respect to an organization means:

(1) A person directly or indirectly controlling, controlled by or under common control with the organization.

(2) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization.

(3) The spouse of a person related to the organization.

(4) A relative by blood or marriage of a person related to the organization who shares the same home with the person.

33. A "*precomputed consumer credit transaction*" is a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the Truth in Lending Act does not in itself make a finance charge or transaction precomputed.

34. "*Presumed*" or "*presumption*" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

35. "*Sale of goods*" includes, but is not limited to, any agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the

owner of the goods upon full compliance with the terms of the agreement. "*Sale of goods*" does not include a consumer rental purchase agreement.

36. "*Sale of an interest in land*" includes, but is not limited to, a lease in which the lessee has an option to purchase the interest, by which all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

37. "*Sale of services*" means furnishing or agreeing to furnish services for a consideration and includes making arrangements to have services furnished by another.

38. "*Seller*" means a person who makes a sale or, except as otherwise provided in this chapter, a person who takes an assignment of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

39. "*Seller credit card*" means either of the following:

a. A credit card issued primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from the card issuer, persons related to the card issuer, persons licensed or franchised to do business under the card issuer's business or trade name or designation, or from any of these persons and from other persons as well.

b. A credit card issued by a person other than a supervised lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from at least one hundred persons not related to the card issuer.

40. "*Services*" includes, but is not limited to:

a. Work, labor, and other personal services.

b. Privileges or benefits with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like.

c. Insurance.

41. "*Supervised financial organization*" means a person, other than an insurance company or other organization primarily engaged in an insurance business, which is organized, chartered, or holding an authorization certificate pursuant to chapter 524, 533, or 534, or pursuant to the laws of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and which is subject to supervision by an official or agency of this state or of the United States.

42. "*Supervised loan*" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds the rate of finance charge permitted in chapter 535.

With respect to a consumer loan made pursuant to open end credit, the finance charge shall be deemed not to exceed the rate permitted in chapter 535 if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one-twelfth of that rate multiplied by the average daily balance of the open end account in the billing cycle for which the charge is made. The average daily balance of the open end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed that rate per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to that rate as the number of days in the billing cycle bears to three hundred sixty-five. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

43. “*Mortgage lender*” means a domestic or foreign corporation authorized in this state to make loans secured by mortgages or deeds of trust.

87 Acts, ch 80, §26-34 HF 585
 Subsections 8 and 11 amended
 Subsection 12, paragraph b, NEW subparagraph (3)
 Subsection 13 stricken and rewritten
 Subsection 14, paragraph b, NEW subparagraph (4)
 Subsection 19, paragraph b, NEW subparagraph (4)
 Subsection 28, unnumbered paragraph 1 amended
 Subsections 33 and 35 amended

537.2504 Finance charge on refinancing.

With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction pursuant to section 537.3201 does not exceed eighteen percent per year, other than a consumer lease or a consumer rental purchase agreement, the creditor may, by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charge for consumer credit sales other than open end credit in section 537.2201 if a consumer credit sale is refinanced, the provisions on finance charge for a consumer loan other than a supervised loan in section 537.2401, subsection 1, or the provisions on finance charge for a supervised loan not pursuant to open end credit in section 537.2401, subsection 2, as applicable, if a consumer loan is refinanced. With respect to a consumer credit transaction in which the rate of finance charge required to be disclosed in the transaction to the consumer pursuant to section 537.3201 exceeds eighteen percent per year, other than a consumer lease or a consumer rental purchase agreement, the creditor may by agreement with the consumer, refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate of finance charge not to exceed that which was required to be disclosed in the original transaction to the consumer pursuant to section 537.3201. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing consists of:

1. If the transaction was not precomputed, the total of the unpaid balance of the amount financed and the accrued charges, including finance charges, on the date of the refinancing, or, if the transaction was precomputed, the amount determined by deducting the unearned portion of the finance charge and any other unearned charges, including charges for insurance or deferral charges, from the unpaid balance on the date of refinancing. For the purposes of this section, the unearned portion of the finance charge and deferral charge, if any, shall be determined as provided in section 537.2510, subsection 2, but without allowing any minimum charge.

2. Appropriate additional charges as permitted under section 537.2501, payment of which is deferred.

87 Acts, ch 80, §35 HF 585
 Unnumbered paragraph 1 amended

537.2505 Finance charge on consolidation.

1. In this section, “*consumer credit transaction*” does not include a consumer lease or a consumer rental purchase agreement.

2. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges including finance charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to

section 537.2504, and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case the creditor may contract for and receive a finance charge as provided in subsection 3, based on the aggregate amount financed resulting from the consolidation.

3. If all debts consolidated arise exclusively from consumer loans, the creditor may contract for and receive the finance charge permitted by the provisions on finance charge for consumer loans pursuant to section 537.2401. If the debts consolidated include a debt arising from a consumer credit sale, including a transaction pursuant to a lender credit card, the amount of the finance charge is governed by the provisions on finance charge for consumer credit sales in section 537.2201.

4. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale by the same seller, the parties may agree to a consolidation resulting in a single schedule of payments either pursuant to subsection 2 or by adding together the unpaid balances with respect to the two sales.

87 Acts, ch 80, §36 HF 585

Subsection 1 amended

537.2506 Advances to perform covenants of consumer.

1. If the agreement with respect to a consumer credit transaction other than a consumer lease or a consumer rental purchase agreement contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, the creditor may add the amounts paid to the debt. Within a reasonable time after advancing any sums, the creditor shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

2. A finance charge may be made for sums advanced pursuant to subsection 1 at a rate not exceeding the rate of finance charge required to be stated to the consumer pursuant to law in the disclosure statement required by this chapter and the Truth in Lending Act, except that with respect to open end credit the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by section 537.2202 or 537.2402, as applicable.

87 Acts, ch 80, §37 HF 585

Subsection 1 amended

537.2508 Conversion to open end credit.

The parties may agree at or within ten days prior to the time of conversion to add the unpaid balance of a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, not made pursuant to open end credit to the consumer's open end credit account with the creditor. The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing under section 537.2504.

87 Acts, ch 80, §38 HF 585

Section amended

537.2509 Right to prepay.

Subject to the provisions on prepayment and minimum charge under section 537.2510, the consumer may prepay in full the unpaid balance of a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, at any time.

87 Acts, ch 80, §39 HF 585
Section amended

537.2510 Rebate upon prepayment.

1. Except as provided in this section, upon prepayment in full of a precomputed consumer credit transaction, the creditor shall rebate to the consumer an amount not less than the amount of rebate provided in subsection 2, paragraph "a", or redetermine the earned finance charge as provided in subsection 2, paragraph "b", and rebate any other unearned charges including charges for insurance. If the rebate otherwise required is less than one dollar, no rebate need be made.

2. The amount of rebate and the redetermined earned finance charge shall be as follows:

a. The amount of rebate shall be determined by applying the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201, according to the actuarial method,

(1) If no deferral charges have been made in a transaction, to the unpaid balances and time remaining as originally scheduled for the period following prepayment.

(2) If a deferral charge has been made, to the unpaid balances and time remaining as deferred for the period following prepayment.

The time remaining for the period following prepayment shall be either the full days following the prepayment; or both the full days, counting the date of prepayment, between the prepayment date and the end of the computational period in which the prepayment occurs, and the full computational periods following the date of prepayment to the scheduled due date of the final installment of the transaction.

b. The redetermined earned finance charge shall be determined by applying, according to the actuarial method, the rate of finance charge which was required to be disclosed in the transaction pursuant to section 537.3201 to the actual unpaid balances of the amount financed for the actual time the unpaid balances were outstanding as of the date of prepayment. Any delinquency or deferral charges collected before the date of prepayment shall be applied to reduce the amount financed as of the date collected.

3. Upon prepayment, but not otherwise, of a consumer credit transaction whether or not precomputed, other than a consumer lease, a consumer rental purchase agreement, or a transaction pursuant to open end credit:

a. If the prepayment is in full, the creditor may collect or retain a minimum charge not exceeding five dollars in a transaction which had an amount financed of seventy-five dollars or less, or not exceeding seven dollars and fifty cents in a transaction which had an amount financed of more than seventy-five dollars, if the minimum charge was contracted for, and the finance charge earned at the time of prepayment is less than the minimum charge contracted for.

b. If the prepayment is in part, the creditor may not collect or retain a minimum charge.

4. For the purposes of this section, the following defined terms apply:

a. "*Computational period*" means the interval between scheduled due dates of installments under the transaction if the intervals are substantially equal or, if the intervals are not substantially equal, one month if the smallest interval between the scheduled due dates of installments under the transaction is one month or more, and otherwise one week.

b. The "*interval*" between specified dates means the interval between them including one or the other but not both of them. If the interval between the date

of a transaction and the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month, or eleven days when the computational period is one week, the interval may be considered by the creditor as one computational period.

5. This section does not preclude the collection or retention by the creditor of delinquency charges under section 537.2502.

6. If the maturity is accelerated for any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date maturity is accelerated.

7. Upon prepayment in full of a precomputed consumer credit transaction by the proceeds of consumer credit insurance, the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than ten business days after satisfactory proof of loss is furnished to the creditor.

87 Acts, ch 80, §40 HF 585
Subsection 3, unnumbered paragraph 1 amended

537.3102 Scope.

Part 2 applies to disclosure with respect to consumer credit transactions, other than consumer rental purchase agreements, and the provision in section 537.3201 applies to a sale of an interest in land or a loan secured by an interest in land, without regard to the rate of finance charge, if the sale or loan is otherwise a consumer credit sale or consumer loan. Parts 3 and 4 apply, respectively, to disclosure, limitations on agreements and practices, and limitations on consumer's liability with respect to certain consumer credit transactions. Part 5 applies to home solicitation sales. Part 6 applies to consumer rental agreements.

87 Acts, ch 80, §41 HF 585
Section amended

537.3301 Security in consumer credit transactions.

1. With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the amount financed is one thousand dollars or more, or in the case of a security interest in goods if either the amount financed is three hundred dollars or more, or if the goods are household goods, or motor vehicles used by a consumer, the consumer's dependents, or the family with which the consumer resides, as transportation to and from a place of employment, one hundred dollars or more. Except as provided with respect to cross-collateral under section 537.3302, a seller may not otherwise take a security interest in property to secure the debt arising from a consumer credit sale.

2. With respect to a consumer lease, a lessor may not take a security interest in property to secure the debt arising from the lease. This subsection does not apply to a security deposit for a consumer lease or a consumer rental purchase agreement.

3. With respect to a supervised loan, a lender may not take a security interest, other than a purchase money security interest, in the clothing, one dining table and set of chairs, one refrigerator, one heating stove, one cooking stove, one radio, beds and bedding, one couch, two living room chairs, cooking utensils, or kitchenware used by the consumer, the consumer's dependents, or the family with whom the consumer resides.

4. A security interest taken in violation of this section is void.

87 Acts, ch 80, §42 HF 585
Subsection 2 amended

537.3308 Balloon payments.

1. Except as provided in subsection 2, if any scheduled payment of a consumer credit transaction is more than twice as large as the average of earlier scheduled

payments, the consumer has the right to refinance the amount of that payment at the time it is due without penalty, as provided in section 537.2504. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction.

2. This section does not apply to any of the following:

- a. A consumer lease.
- b. A transaction pursuant to open end credit.
- c. A transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments of obligations of the consumer.
- d. A transaction of a class defined by rule of the administrator as not requiring for the protection of the consumer his right to refinance as provided in this section.
- e. A consumer loan in which the amount financed exceeds five thousand dollars and is secured by an interest in land.
- f. A consumer rental purchase agreement.

87 Acts, ch 80, §43 HF 585
Subsection 2, NEW paragraph f

537.3310 Limitations on executory transactions.

1. In a consumer credit transaction, other than a consumer rental purchase agreement, if performance by a creditor is by delivery of goods, services, or both, in four or more installments, either on demand of the consumer or by prearranged scheduled performance, the consumer may cancel the obligation with respect to that part which has not been performed on the date of cancellation.

2. If the consumer exercises the right to cancel or, in any event, if the creditor attempts to exercise a right to accelerate, the creditor is entitled to recover only that part of the cash price and charges attributable to the part of the creditor's obligation which has been performed.

3. Cancellation under this section shall be effective when the consumer mails or delivers a written notice of cancellation.

4. Notwithstanding an agreement to the contrary, a creditor may not exercise a right to accelerate beyond the amount set forth in subsection 2.

5. Subsections 1 through 4 do not apply to a membership camping contract which is subject to the requirements of chapter 557B.

87 Acts, ch 80, §44 HF 585; 87 Acts, ch 181, §4 HF 520
Subsection 1 amended
NEW subsection 5

Part 6 CONSUMER RENTAL PURCHASE AGREEMENTS

537.3601 Short title.

This part of article 3 may be known and may be cited as the "*Consumer Rental Purchase Agreement Act*".

87 Acts, ch 80, §1 HF 585
NEW section

537.3602 Purposes—rules of construction.

1. This part shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this part are to:

- a. Define, simplify, and clarify the law governing consumer rental purchase agreements.
- b. Provide certain disclosures to consumers who enter into consumer rental purchase agreements, and further consumer understanding of the terms of consumer rental purchase agreements.
- c. Protect consumers against unfair practices.
- d. Permit and encourage the development of fair and economically sound rental purchase practices.

e. Make the law on consumer rental purchase agreements, including administrative rules, more uniform among the various uniform consumer credit code jurisdictions.

3. A reference to a requirement imposed by this part includes a reference to a related rule of the administrator adopted pursuant to this chapter.

87 Acts, ch 80, §2 HF 585
NEW section

537.3603 Exclusions.

This part does not apply to, and an agreement which complies with this part is not governed by, the provisions regarding:

1. A consumer credit sale as defined in section 537.1301, subsection 12.
2. A consumer lease as defined in section 537.1301, subsection 13.
3. A consumer loan as defined in section 537.1301, subsection 14.
4. A lease or agreement which constitutes a "*credit sale*" as defined in 12 C.F.R. §226.2(a16), and the Truth In Lending Act, 15 U.S.C. §1602(g), or an agreement which constitutes a "*sale of goods*" under section 537.1301, subsection 35.
5. A lease which constitutes a consumer lease as defined in 12 C.F.R. §226.2(a6).
6. A lease or agreement which constitutes a security interest as defined in section 554.1201, subsection 37.

87 Acts, ch 80, §3 HF 585
NEW section

537.3604 General definitions.

As used in this part, unless otherwise required by the context:

1. "*Administrator*" means the administrator as designated in section 537.6103.
2. "*Advertisement*" means a commercial message in any medium, including signs, window displays, and price tags, that promotes, directly or indirectly, a consumer rental purchase agreement.
3. "*Cash price*" means the price at which the lessor in the ordinary course of business would offer to sell the personal property to the lessee for cash on the date of the consumer rental purchase agreement.
4. "*Consummation*" means the time at which the lessee enters into a consumer rental purchase agreement.
5. "*Lessee*" means a natural person who rents personal property under a consumer rental purchase agreement for personal, family, or household use.
6. "*Lessor*" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement.
7. "*Personal property*" means any property that is not real property under the laws of this state when it is made available for a consumer rental purchase agreement.
8. "*Consumer rental purchase agreement*" means an agreement for the use of personal property in which all of the following are applicable:
 - a. The lessor is regularly engaged in the rental purchase business.
 - b. The agreement is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property.
 - c. The lessee is a person other than an organization.
 - d. The lessee takes under the consumer rental purchase agreement primarily for a personal, family, or household purpose.

e. The amount payable under the consumer rental purchase agreement does not exceed twenty-five thousand dollars.

87 Acts, ch 80, §4 HF 585
NEW section

537.3605 Disclosures.

In a consumer rental purchase agreement, the lessor shall disclose the following items, as applicable:

1. The total of scheduled payments accompanied by an explanation that this term means the *"total dollar amount of lease payments you will have to make to acquire ownership"*.

2. By item, the total number, amounts, and timing of all lease payments and other charges including taxes or official fees paid to or through the lessor which are necessary to acquire ownership of the property.

3. Any initial or advance payment such as a delivery charge, security deposit, or trade-in allowance.

4. A statement that the lessee will not own the property until the lessee has made the total of payments necessary to acquire ownership of the property.

5. A statement that the total of payments does not include additional charges such as late payment charges, and a separate listing and explanation of these charges as applicable.

6. If applicable, a statement that the lessee is responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged, or destroyed.

7. A description of the goods or merchandise including model numbers as applicable and a statement indicating whether the property is new or used. It is not a violation of this subsection to indicate that the property is used if it is actually new.

8. A statement that at any time after the first periodic payment is made, the lessee may acquire ownership of the property by tendering fifty-five percent of the difference between the total of scheduled payments necessary to acquire ownership and the total amount of lease payments paid on the account at that time. It is not a violation of this subsection for the lessor and the lessee to agree in writing to allow the lessee to acquire ownership of the property for less than the amounts referred to in this subsection.

9. The cash price of the merchandise.

87 Acts, ch 80, §5 HF 585
NEW section

537.3606 Form requirements.

1. The disclosure information required by section 537.3605 and this section shall be disclosed in a consumer rental purchase agreement, and shall meet the following requirements:

a. Be made clearly and conspicuously with items appearing in logical order and segregated as appropriate for readability and clarity.

b. Be made in writing.

c. Except as provided in subsection 2 or in rules adopted by the administrator, need not be contained in a single writing or made in the order set forth in section 537.3605.

d. May be supplemented by additional information or explanations supplied by the lessor, but none shall be stated, used or placed so as to mislead or confuse the lessee, or to contradict, obscure, or detract attention from the information required by section 537.3605, and so long as the additional information or explanations do not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed by section 537.3605.

2. The lessor shall disclose all information required by section 537.3605 before the consumer rental purchase agreement is consummated. These disclosures shall be made on the face of the writing evidencing the consumer rental purchase agreement.

3. Before any payment is due, the lessor shall furnish the lessee with an exact copy of each consumer rental purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement. If there is more than one lessee in a consumer rental purchase agreement, delivery of a copy of the consumer rental purchase agreement to one of the lessees constitutes compliance with this part; however, a lessee not signing the agreement is not liable under it.

4. The administrator may adopt by rule requirements for the order, acknowledgement by initialing, and conspicuousness of the disclosures set forth in section 537.3605. These rules may allow these disclosures to be made in accordance with model forms prepared by the administrator.

5. The terms of the consumer rental purchase agreement, except as otherwise provided in this part, shall be set forth in not less than eight-point standard type, or such similar type as prescribed in rules adopted by the administrator.

6. Every consumer rental purchase agreement shall contain immediately above or adjacent to the place for the signature of the lessee, a clear, conspicuous, printed or typewritten notice in substantially the following language:

NOTICE TO LESSEE—READ BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

d. YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.

e. IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.

7. The notice described in subsection 6 shall be in bold face, ten-point type.

87 Acts, ch 80, §6 HF 585
NEW section

537.3607 Receipts.

The lessor shall furnish the lessee, without request, an itemized written receipt for each payment in cash, or any other time the method of payment itself does not provide evidence of payment.

87 Acts, ch 80, §7 HF 585
NEW section

537.3608 Acquiring ownership.

At any time after the first lease payment is made, the lessee may acquire ownership of the property by tendering fifty-five percent of the difference between the total of lease payments necessary to acquire ownership and the total amount of lease payments made. The lessor shall then provide written evidence to the lessee that the lessee has acquired ownership of the property. It is not a violation

of this section for the lessor and the lessee to agree in writing to allow the lessee to acquire ownership of the property for less than the amounts referred to in this section.

87 Acts, ch 80, §8 HF 585
NEW section

537.3609 Renegotiation.

1. A renegotiation occurs when an existing consumer rental purchase agreement is satisfied and replaced by a new consumer rental purchase agreement undertaken by the same lessor and lessee. A renegotiation is a new lease requiring new disclosures.

2. However, the following events are not renegotiations:

a. The addition or return of property in a multi-item agreement or the substitution of the leased property, if in either case the lease payment is not changed by more than twenty-five percent.

b. A deferral or extension of one or more lease payments, or portions of a lease payment.

c. A reduction in charges in the agreement.

d. A lease or agreement involved in a court proceeding.

87 Acts, ch 80, §9 HF 585
NEW section

537.3610 Balloon payments prohibited.

A lessee shall not be required, as a condition to acquiring ownership, to make a payment that is more than twice the amount of a regular rental payment, or to pay lease payments totaling more than the cost to acquire ownership as disclosed pursuant to section 537.3605. This section does not apply to payments made pursuant to section 537.3608, 537.3612, or 537.3619.

87 Acts, ch 80, §10 HF 585
NEW section

537.3611 Prohibited charges.

A lessor shall not make a charge for any of the following:

1. Any insurance whether in connection with the transaction or otherwise, except that a charge may be made for property insurance on the leased property if the charge is clearly disclosed as optional and all other requirements of section 537.2501, subsection 2, paragraph "a", are met.

2. A penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point, except for those charges authorized by sections 537.3612 and 537.3613.

3. Payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the lessee as part of the consumer rental purchase agreement.

87 Acts, ch 80, §11 HF 585
NEW section

537.3612 Additional charges.

1. In a consumer rental purchase agreement, the lessor may contract for and receive an initial nonrefundable administrative fee not to exceed ten dollars. If a security deposit is required by the lessor, the amount and conditions under which it is returned must be disclosed with the disclosures required by sections 537.3605 and 537.3606.

2. In a consumer rental purchase agreement, the lessor may contract for and receive a delivery charge not to exceed ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge not to exceed twenty-five dollars. A delivery charge may be assessed only if the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed with the disclosures required by sections 537.3605 and 537.3606. The

delivery charge may be assessed in lieu of and not in addition to the initial administrative charge in subsection 1 of this section.

3. In a consumer rental purchase agreement, a lessor may contract for and receive a charge for picking up payments from the lessee if the lessor is required or requested to visit the lessee's dwelling to pick up a payment. In a consumer rental purchase agreement with payment or renewal dates which are more frequent than monthly, this charge shall not be assessed more than three times in any three-month period. In consumer rental purchase agreements with payments or renewal options which are at least monthly, this charge shall not be assessed more than three times in any six-month period. A charge assessed pursuant to this subsection shall not exceed seven dollars. This charge is in lieu of any delinquency charge assessed for the applicable payment period.

4. In a consumer rental purchase agreement, the parties may contract for late charges or delinquency fees as follows:

a. For consumer rental purchase agreements with monthly renewal dates, a late charge not exceeding five dollars may be assessed on any payment not made within five business days after either payment is due or the return of the property is required.

b. For consumer rental purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding three dollars may be assessed on any payments not made within three business days after either payment is due or the return of the property is required.

A late charge on a consumer rental purchase agreement may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A late charge shall not be assessed against a payment that is timely made, even though an earlier late charge has not been paid in full.

87 Acts, ch 80, §12 HF 585
NEW section

537.3613 Reinstatement fees.

A reinstatement fee as provided for in section 537.3616 shall not equal more than the outstanding balance of any missed payments and delinquency charges on those missed payments plus an additional reinstatement fee that shall not exceed five dollars.

87 Acts, ch 80, §13 HF 585
NEW section

537.3614 Taxes and official fees.

1. If the amount is separately disclosed in the agreement, the lessor may require the lessee to pay all applicable state and county sales, use, and personal property taxes levied as a result of the execution of the consumer rental purchase agreement, provided that the lessor pays the full amount of these taxes to the appropriate authorities.

2. If the amount is separately disclosed in the agreement, the lessor may contract for and receive from the lessee an amount equal to all official fees required to be paid under the consumer rental purchase agreement provided that the lessor pays the full amount of these fees to the appropriate authorities.

87 Acts, ch 80, §14 HF 585
NEW section

537.3615 Advertising.

1. An advertisement for a consumer rental purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

2. If an advertisement for a consumer rental purchase agreement refers to or states the amount of any payment, or the right to acquire ownership, for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

- a. That the transaction advertised is a consumer rental purchase agreement.
- b. The total of payments necessary to acquire ownership.
- c. That the lessee will not own the property until the total amount necessary to acquire ownership is paid in full or by prepayment as provided for by law.

3. Notwithstanding the requirements of subsection 1, if the advertisement is published by way of radio announcement or on a roadside billboard, the lessor need only make the disclosures required by subsection 2, paragraphs "a" and "c".

4. With respect to any matters specifically governed by the advertising provisions of the federal Consumer Credit Protection Act, compliance with that Act satisfies the requirements of this section.

5. This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

87 Acts, ch 80, §15 HF 585
NEW section

537.3616 Lessee's reinstatement rights.

1. A lessee who fails to make timely rental payments has the right to reinstate the original consumer rental purchase agreement without losing any rights or options previously acquired under the consumer rental purchase agreement if both of the following apply:

a. Subsequent to having failed to make a timely rental payment, the lessee has surrendered the property to the lessor, if and when requested by the lessor.

b. Not more than sixty days has passed since the lessee has returned the property.

2. As a condition precedent to reinstatement of a consumer rental purchase agreement, a lessor may charge the outstanding balance of any accrued payments and delinquency charges, a reinstatement fee, and the delivery charges allowable by section 537.3612, subsection 2, if redelivery of the item is necessary.

3. If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same item, if available, leased by the lessee prior to reinstatement. If the same item is not available, a substitute item of comparable worth, quality, and condition may be used. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 537.3605.

87 Acts, ch 80, §16 HF 585
NEW section

537.3617 Unconscionability.

Unconscionability in consumer rental purchase agreements is governed by section 537.5108.

87 Acts, ch 80, §17 HF 585
NEW section

537.3618 Default.

An agreement of the parties to a consumer rental purchase agreement with respect to default on the part of the lessee is enforceable only to the extent that one of the following apply:

1. The lessee both fails to renew an agreement and also fails to return the rented property or make arrangements for its return as provided by the agreement.

2. The prospect of payment, performance, or return of the property is materially impaired due to a breach of the consumer rental purchase agreement; the burden of establishing the prospect of material impairment is on the lessor.

87 Acts, ch 80, §18 HF 585
NEW section

537.3619 Cure of default.

1. In a consumer rental purchase agreement, after a lessee has been in default for three business days and has not voluntarily surrendered possession of the rented property, a lessor may give the lessee the notice provided in subsection 3 when the consumer has the right to cure a default. A lessor gives the notice to the lessee under this section when the lessor delivers notice to the lessee or mails the notice to the last known address of the lessee.

2. For the purpose of this section, there is no right to cure and no limitation on the lessor's rights with respect to a default that occurs within twelve months after an earlier default as to which a lessor has given a proper notice of the lessee's right to cure.

3. The notice of right to cure must be in writing and conspicuously state all of the following:

- a. The name, address, and telephone number of the lessor to whom payment is to be made.
- b. A brief identification of the transaction.
- c. The lessee's right to cure the default.
- d. The amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

THE NAME, ADDRESS, & TELEPHONE NUMBER OF THE LESSOR
ACCOUNT NUMBER, IF ANY
BRIEF IDENTIFICATION OF TRANSACTION

() is the last date for payment, () is the amount now due. You have failed to renew your rental purchase agreement(s). If you pay the amount now due (above) by the last date for payment (above), you may continue with the agreement as though you had renewed on time. If you do not pay by that date, we may exercise our rights under the law. If you are late again during the next twelve months of your agreement, in either returning the property or renewing your agreement, we may exercise our rights without sending you another notice like this one. If you have questions, you may write or telephone the lessor promptly.

4. With respect to a consumer rental purchase agreement, except as provided in subsection 5, after a default consisting of the lessee's failure to renew and failure to return the property, a lessor, because of that default, may not instigate court action to recover the rented property until five business days after the notice of the lessee's right to cure is given. In the case of an agreement with weekly or biweekly renewal dates, such action shall not be taken until three business days after the notice of the lessee's right to cure is given.

5. With respect to defaults on the same consumer rental purchase agreement and subject to subsection 4, after a lessor has once given a proper notice of the lessee's right to cure, this section does not give the consumer a right to cure or impose any additional limitations beyond those otherwise imposed by this part on the lessor's right to proceed against the lessee or the lessor's right to recover the property.

6. Until expiration of the minimum applicable periods contained in subsection 4 after notice is given, the lessee may cure all defaults consisting of failure to renew and failure to return the property by tendering the amount of all unpaid sums due at the time of the tender plus any unpaid delinquency charges or other charges authorized by section 537.3616.

7. This section and the provisions on limitations of agreements do not prohibit a lessee from voluntarily surrendering possession of the rented property, and the

lessor from enforcing any past due obligation which the lessee may have at any time after default. However, in an enforcement proceeding, the lessor shall affirmatively plead and prove either that the notice to cure is not required or that the lessor has given the required notice, but the failure to so plead does not invalidate any action taken by the lessor that is lawful and if the lessor has rightfully repossessed any property the repossession is not conversion.

8. A repossession of rented property in violation of this section is void.

87 Acts, ch 80, §19 HF 585
NEW section

537.3620 Willful and intentional violations.

A person who willfully and intentionally violates a provision of this part is guilty of a serious misdemeanor.

87 Acts, ch 80, §20 HF 585
NEW section

537.3621 Damages.

In case of a violation of a provision of this part with respect to a consumer rental purchase agreement, the lessee in the agreement may recover from the person committing the violation, or may set off or counterclaim in an action by that person, actual damages, with a minimum recovery of three hundred dollars or twenty-five percent of the total cost to acquire ownership under the consumer rental purchase agreement, whichever is greater; attorneys' fees; and court costs.

87 Acts, ch 80, §21 HF 585
NEW section

537.3622 Effect of correction.

Notwithstanding sections 537.3620 and 537.3621, a failure to comply with a provision of this part which is due to a bona fide error may be corrected within thirty days after the date of execution of the consumer rental purchase agreement by the lessee. If so corrected, neither the lessor nor any holder is subject to penalty under this section if, where appropriate, a new written agreement and disclosures are provided to the lessee and any excess charges are refunded to the lessee.

87 Acts, ch 80, §22 HF 585
NEW section

537.3623 Statute of limitations.

An action shall not be brought under this part more than two years after the occurrence of the alleged violation.

87 Acts, ch 80, §23 HF 585
NEW section

537.3624 Enforcement.

1. The provisions of this part are subject to the powers and functions of the administrator as provided in article 6 of this chapter and to the debt collection practices as provided in article 7 of this chapter. However, section 537.6113, subsection 2, does not apply to violations of this part.

2. If a court finds in an action brought by the administrator pursuant to section 537.6113 that it is proven that a lessor has intentionally acted in bad faith in its performance under this part, the lessor is subject to a civil penalty of not less than one hundred dollars nor more than one thousand dollars for each violation. However, no more than one penalty may be imposed in any one action against a lessor for repeated violations of the same provision. A civil penalty pursuant to this subsection shall not be imposed for a violation of this part occurring more than two years before the action is brought, or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

87 Acts, ch 80, §24 HF 585
NEW section

537.5108 Unconscionability—inducement by unconscionable conduct—unconscionable debt collection.

1. With respect to a transaction that is, gives rise to, or leads the debtor to believe it will give rise to a consumer credit transaction, in an action other than

a class action, if the court as a matter of law finds the agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or if the court finds any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

2. With respect to a consumer credit transaction, or a transaction which would have been a consumer credit transaction if a finance charge was made or the obligation was payable in installments, if the court as a matter of law finds in an action other than a class action, that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages he has sustained.

3. If it is claimed or appears to the court that the agreement or transaction or any term or part of it may be unconscionable, or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof, or of the conduct, to aid the court in making the determination.

4. In applying subsection 1, consideration shall be given to each of the following factors, among others, as applicable:

a. Belief by the seller, lessor, or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor. However, the rental renewals necessary to acquire ownership in a consumer rental purchase agreement shall not be construed to be the obligation contemplated in this subsection if the consumer may terminate the agreement without penalty at any time. As used in this paragraph, "*obligation*" means the initial periodic lease payments and any other additional advance payments required at the consummation of the transaction.

b. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, knowledge by the seller or lessor at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased.

c. In the case of a consumer credit sale, consumer lease, or consumer rental purchase agreement, *gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in consumer credit transactions by like consumers.*

d. The fact that the creditor contracted for or received separate charges for insurance with respect to a consumer credit sale or consumer loan with the effect of making the sale or loan, considered as a whole, unconscionable.

e. The fact that the seller, lessor or lender has knowingly taken advantage of the inability of the consumer or debtor reasonably to protect the consumer's or debtor's interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

f. The fact that the seller, lessor or lender has engaged in conduct with knowledge or reason to know that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct in section 537.6111.

5. In applying subsection 2, violations of section 537.7103 shall be considered, among other factors, as applicable.

6. If in an action in which unconscionability is claimed the court finds unconscionability pursuant to subsection 1 or 2, the court shall award reasonable

fees to the attorney for the consumer or debtor. If the court does not find unconscionability and the consumer or debtor claiming unconscionability has brought or maintained an action the consumer or debtor knew to be groundless, the court shall award reasonable fees to the attorney for the party against whom the claim is made. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney on the unconscionability issue and not by the amount of the recovery on behalf of the prevailing party.

7. The remedies of this section are in addition to remedies otherwise available for the same conduct under law other than this chapter, but no double recovery of actual damages may be had.

8. For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable.

87 Acts, ch 80, §45-47 HF 585
Subsection 4, paragraphs a, b, and c amended

537.5109 Default.

"Default" with respect to a consumer credit transaction and for the purposes of this article, means either of the following, if without justification under any law:

1. Failure to make a payment within ten days of the time required by agreement, or in a consumer rental purchase agreement, failure to renew an agreement and failure to return the rented property or make arrangements for its return as provided by the agreement.

2. Failure to observe any other covenant of the transaction, breach of which materially impairs the condition, value or protection of or the creditor's right in any collateral securing the transaction, or materially impairs the consumer's prospect to pay amounts due under the transaction. The burden of establishing material impairment is on the creditor.

87 Acts, ch 80, §48 HF 585
Subsection 1 amended

537.5110 Cure of default.

1. Notwithstanding any term or agreement to the contrary, the obligation of a consumer in a consumer credit transaction is enforceable by a creditor only after compliance with this section, except that in a consumer rental purchase agreement, default is governed by section 537.3618.

2. A creditor who believes in good faith that a consumer is in default may give the consumer written notice of the alleged default, and, if the consumer has a right to cure the default, shall give the consumer the notice of right to cure provided in section 537.5111 before commencing any legal action in any court on an obligation of the consumer and before repossessing collateral. However, this subsection and subsection 4 do not require a creditor to give notice of right to cure prior to the filing of a petition by a creditor seeking to enforce the consumer's obligation in which attachment under chapter 639 is sought upon any of the grounds specified in section 639.3, subsections 3 to 12.

When property is attached without the giving of notice of right to cure as permitted by this subsection, the creditor immediately shall give notice of the attachment to the consumer in the same manner as prescribed by the rules of civil procedure for service of an original notice. The notice shall advise the consumer that the attachment may be discharged by the filing of a bond as provided in sections 639.42 and 639.45, or by the filing of a motion with the court to discharge the attachment pursuant to section 639.63. The notice required by this paragraph is in lieu of the notice requirements of sections 639.31 and 639.33.

When a motion is filed to discharge an attachment made without the giving of a prior notice of right to cure, the court shall hear the motion within three days of the filing of the motion to discharge. If the court finds that the attachment should not have been issued or should not have been levied on all or any part of

the property held, the attachment shall be discharged in whole or in part and property wrongfully attached shall be returned to the consumer.

If the court finds that there was no probable cause to believe the grounds upon which the attachment was issued, the consumer may be awarded damages plus reasonable attorney's fees to be determined by the court.

3. A consumer has a right to cure the default unless, in other than an insurance premium loan transaction, the creditor has given the consumer a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default, or the consumer has voluntarily surrendered possession of goods that are collateral and the creditor has accepted them in full satisfaction of any debt owing on the transaction in default.

4. If the consumer has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or take possession of collateral, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until twenty days after a proper notice of right to cure is given.

b. With respect to an insurance premium loan, a creditor shall not give notice of cancellation as provided in subsection 6 until thirteen days after a proper notice of right to cure is given.

c. Until the expiration of the minimum applicable period after the notice is given, the consumer may cure the default by tendering either the amount of all unpaid installments due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure any default other than nonpayment of amounts due, which is described in the notice of right to cure. The act of curing a default restores to the consumer the consumer's rights under the agreement as though no default had occurred, except as provided in subsection 3.

5. This section and the provisions on waiver, agreements to forego rights, and settlement of claims under section 537.1107 do not prohibit a consumer from voluntarily surrendering possession of goods which are collateral and do not prohibit the creditor from thereafter enforcing the creditor's security interest in the goods at any time after default.

6. If a default on an insurance premium loan is not cured, the lender may give notice of cancellation of each insurance policy or contract to be canceled. If given, the notice of cancellation shall be in writing and given to the insurer that issued the policy or contract and to the insured. The insurer, within two business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to the insurer, shall give any notice of cancellation required by the policy or contract or by law and, within ten business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contracts as of that effective date. Within ten business days after receipt of the unearned premium, the lender shall pay to the consumer indebted upon the insurance premium loan any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan.

7. If a creditor in a consumer credit transaction commences an action for money judgment prior to giving the customer notice of right to cure as required by this section and fails to follow the procedures set out in this section, the court shall dismiss the action without prejudice. If the action was commenced as a small claim under chapter 631, the creditor shall not be found to be in violation of this section for purposes of section 537.5201 and the penalties provided in that section shall not apply if the creditor proves by a preponderance of the evidence that the creditor did not at the time of the violation have either knowledge or reason to know of the requirements of this section, and for this purpose the court shall

consider all relevant evidence, including but not limited to the education or experience of the creditor with respect to the collection of debts arising from consumer credit transactions and any representation of the creditor by legal counsel and any legal advice rendered to the creditor with respect to the collection of debts arising from consumer credit transactions.

87 Acts, ch 80, §49 HF 585
Subsection 1 amended

537.5111 Notice of right to cure.

1. The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction and of the consumer's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered.

2. Except as provided in subsection 4, a notice in substantially the following form complies with this section:

.....
(name, address, and telephone number of creditor)

.....
(account number, if any)

.....
(brief identification of credit transaction)

You are now in default on this credit transaction. You have a right to correct this default until (date).

If you do so, you may continue with the contract as though you did not default. Your default consists of.....

..... (describe default alleged)
Correction of the default: Before, (date)

.....
(describe the acts necessary for cure)

If you do not correct your default by the date stated above, we may exercise rights against you under the law.

If you default again in the next year, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone

.....
(the creditor)

promptly.

3. A creditor gives notice to the consumer under this part when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence as defined in section 537.1201, subsection 4.

4. If the consumer credit transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2, and a notice in substantially the form specified in that subsection complies with this subsection except for the following:

a. In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be canceled.

b. In lieu of the statement in the form of notice specified in subsection 2 that the creditor may exercise the creditor's rights under the law, the statement that each policy or contract, identified in the notice may be canceled.

c. The last paragraph of the form of notice specified in subsection 2 shall be omitted.

5. This section does not apply to a consumer rental purchase agreement, which is governed by section 537.3618.

87 Acts, ch 80, §50 HF 585
NEW subsection 5

537.5201 Effect of violations on rights of parties.

1. The consumer, other than a lessee in a consumer rental purchase agreement, has a cause of action to recover actual damages and in addition a right in an action other than a class action to recover from the person violating this chapter a penalty in an amount determined by the court, but not less than one hundred dollars nor more than one thousand dollars, if a person has violated the provisions of this chapter relating to:

- a. Authority to make supervised loans under section 537.2301.
- b. Restrictions on interests in land as security under section 537.2307.
- c. Limitations on the schedule of payments or loan terms for supervised loans under section 537.2308.
- d. Attorney's fees under section 537.2507.
- e. Charges for other credit transactions under section 537.2601.
- f. Disclosure with respect to consumer leases under section 537.3202.
- g. Notice to consumers under section 537.3203.
- h. Receipts, statements of account and evidences of payment under section 537.3206.
- i. Form of insurance premium loan agreement under section 537.3207.
- j. Notice to cosigners and similar parties under section 537.3208.
- k. Restrictions on rates stated to the consumer under section 537.3210.
- l. Security in consumer credit transactions under section 537.3301.
- m. Prohibition against assignments of earnings under section 537.3305.
- n. Authorizations to confess judgment under section 537.3306.
- o. Certain negotiable instruments prohibited under section 537.3307.
- p. Referral sales and leases under section 537.3309.
- q. Limitations on executory transactions under section 537.3310.
- r. Prohibition against discrimination under section 537.3311.
- s. Limitations on default charges under section 537.3402.
- t. Card issuer subject to claims and defenses under section 537.3403.
- u. Assignees subject to claims and defenses under section 537.3404.
- v. Lenders subject to claims and defenses arising from sales and leases, under section 537.3405.
- w. Door-to-door sales under section 537.3501.
- x. Assurance of discontinuance under section 537.6109.
- y. Prohibitions against unfair debt collection practices under section 537.7103.
- z. Failure to provide a proper notice of cure or right to cure under sections 537.5110 and 537.5111.

aa. Failure to provide a notice of consumer paper under section 537.3211.

With respect to violations arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

2. A consumer is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid. A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the creditor has notified the consumer that the consumer may request a refund and the consumer has not so requested within thirty days thereafter. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount either from the person who made the excess charge or from an assignee of that person's rights who

undertakes direct collection of payments from or enforcement of rights against consumers arising from the debt.

3. If a creditor has contracted for or received a charge in excess of that allowed by this chapter, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable, in an action other than a class action, the excess charge or refund and a penalty in an amount determined by the court not less than one hundred dollars or more than one thousand dollars. With respect to excess charges arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. For purposes of this subsection, a reasonable time is presumed to be thirty days.

4. Except as otherwise provided in this chapter, no violation of this chapter impairs rights on a debt.

5. If an employer discharges an employee in violation of the provisions prohibiting discharge in section 642.21, subsection 2, paragraph "c", the employee may within two years bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

6. A person is not liable for a penalty under subsection 1 or 3 if the person notifies the consumer of an error before the person receives from the consumer written notice of the error or before the consumer has brought an action under this section, and the person corrects the error within forty-five days after notifying the consumer. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund as provided in subsection 2. The administrator, and any official or agency of this state having supervisory authority over a person, shall give prompt notice to a person of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the person.

7. A person may not be held liable in any action brought under this section for a violation of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

8. In an action in which it is found that a person has violated this chapter, the court shall award to the consumer the costs of the action and to his attorneys their reasonable fees. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the consumer.

87 Acts, ch 80, §51 HF 585
See Code editor's note
Section amended

537.5301 Willful violations.

1. A person who willfully and knowingly makes charges in excess of those permitted by the provisions of article 2, part 4, applying to supervised loans, is guilty of a serious misdemeanor.

2. A person who, in violation of the provisions of this Act applying to authority to make supervised loans under section 537.2301, willfully and knowingly engages without a license in the business of making supervised loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against consumers arising from supervised loans, is guilty of a serious misdemeanor.

3. A person, other than a lessor in a consumer rental purchase agreement, who willfully and knowingly engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertaking direct collection of payments or enforcement of these rights, without complying with the provisions of this chapter concerning notification under section 537.6202 or payment of fees under section 537.6203, is guilty of a simple misdemeanor.

4. A person who willfully and knowingly violates the provisions of section 537.7103 is guilty of a serious misdemeanor.

87 Acts, ch 80, §52 HF 585
Subsection 3 amended

537.7102 Definitions.

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

1. *"Debt"* means an actual or alleged obligation arising out of a consumer credit transaction, or a transaction which would have been a consumer credit transaction either if a finance charge was made, if the obligation was not payable in installments, if a lease was for a term of four months or less, or if a lease was of an interest in land. A debt includes a check as defined in section 554.3104 given in a transaction which was a consumer credit sale or in a transaction which would have been a consumer credit sale if credit was granted and if a finance charge was made.

2. *"Debt collection"* means an action, conduct or practice in soliciting debts for collection or in the collection or attempted collection of a debt.

3. *"Debt collector"* means a person engaging, directly or indirectly, in debt collection, whether for the person, the person's employer, or others, and includes a person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended to be used to collect debts.

4. *"Administrator"* means the person designated in section 537.6103.

5. *"Debtor"*, for the purposes of this article, means the person obligated.

6. *"Creditor"*, for the purposes of this article, means the person to whom a debtor is obligated, either directly or indirectly, on a debt.

87 Acts, ch 137, §3 HF 655
Subsection 1 amended

537.7103 Prohibited practices.

1. A debt collector shall not collect or attempt to collect a debt by means of an illegal threat, coercion or attempt to coerce. The conduct described in each of the following paragraphs is an illegal threat, coercion or attempt to coerce within the meaning of this subsection:

a. The use, or express or implicit threat of use, of force, violence or other criminal means, to cause harm to a person or to property of a person.

b. The false accusation or threat to falsely accuse a person of fraud or any other crime.

c. False accusations made to a person, including a credit reporting agency, or the threat to falsely accuse, that a debtor is willfully refusing to pay a just debt. However, a failure to reply to requests for payment and a failure to negotiate disputes in good faith are deemed willful refusal.

d. The threat to sell or assign to another an obligation of the debtor with an attending representation or implication that the result of the sale or assignment will be to subject the debtor to harsh, vindictive or abusive collection attempts.

e. The false threat that nonpayment of a debt may result in the arrest of a person or the seizure, garnishment, attachment or sale of property or wages of that person.

f. An action or threat to take an action prohibited by this chapter or any other law.

2. A debt collector shall not oppress, harass or abuse a person in connection with the collection or attempted collection of a debt of that person or another person. The following conduct is oppressive, harassing or abusive within the meaning of this subsection:

a. The use of profane or obscene language or language that is intended to abuse the hearer or reader and which by its utterance would tend to incite an immediate breach of the peace.

b. The placement of telephone calls to the debtor without disclosure of the name of the business or company the debt collector represents.

c. Causing expense to a person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication by attempting to deceive or mislead persons as to the true purpose of the notice, letter, message or communication.

d. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously or at unusual hours or times known to be inconvenient, with intent to annoy, harass or threaten a person.

3. A debt collector shall not disseminate information relating to a debt or debtor as follows:

a. The communication or threat to communicate or imply the fact of a debt to a person other than the debtor or a person who might reasonably be expected to be liable for the debt, except with the written permission of the debtor given after default. For the purposes of this paragraph, the use of language on envelopes indicating that the communication relates to the collection of a debt is a communication of the debt. However, this paragraph does not prohibit a debt collector from any of the following:

(1) Notifying a debtor of the fact that he may report a debt to a credit bureau or engage an agent or an attorney for the purpose of collecting the debt.

(2) Reporting a debt to a credit reporting agency or any other person reasonably believed to have a legitimate business need for the information.

(3) Engaging an agent or attorney for the purpose of collecting a debt.

(4) Attempting to locate a debtor whom the debt collector has reasonable grounds to believe has moved from the debtor's residence, where the purpose of the communication is to trace the debtor, and the content of the communication is restricted to requesting information on the debtor's location.

(5) Communicating with the debtor's employer or credit union not more than once during any three-month period when the purpose of the communication is to obtain an employer's or credit union's debt counseling services for the debtor. In the event no response is received by the debt collector from a communication to the debtor's employer or credit union the debt collector may make one inquiry as to whether the communication was received. In addition a debt collector may respond to any communications by a debtor's employer or credit union.

(6) Communicating with the debtor's employer once during any one-month period, if the purpose of the communication is to verify with an employer the fact of the debtor's employment and if the debt collector does not disclose, except as permitted in subparagraph (5), information other than the fact that a debt exists. This subparagraph does not authorize a debt collector to disclose to an employer the fact that a debt is in default.

(7) Communicating the fact of the debt not more than once in any three-month period, with the parents of a minor debtor, or with any trustee of any property of the debtor, conservator of the debtor or the debtor's property, or guardian of the debtor. In addition, a debt collector may respond to inquiry from a parent, trustee, conservator or guardian.

(8) Communicating with the debtor's spouse with the consent of the debtor, or responding to inquiry from the debtor's spouse.

b. The disclosure, publication, or communication of information relating to a person's indebtedness to another person, by publishing or posting a list of indebted

persons, commonly known as "deadbeat lists", or by advertising for sale a claim to enforce payment of a debt when the advertisement names the debtor.

c. The use of a form of communication to the debtor, except a telegram, an original notice or other court process, or an envelope displaying only the name and address of a debtor and the return address of the debt collector, intended or so designed as to display or convey information about the debt to another person other than the name, address, and phone number of the debt collector.

4. A debt collector shall not use a fraudulent, deceptive, or misleading representation or means to collect or attempt to collect a debt or to obtain information concerning debtors. The following conduct is fraudulent, deceptive, or misleading within the meaning of this subsection:

a. The use of a business, company or organization name while engaged in the collection of debts, other than the true name of the debt collector's business, company, or organization or the name of the business or company the debt collector represents.

b. The failure to clearly disclose in all written communications made to collect or attempt to collect a debt or to obtain or attempt to obtain information about a debtor, that the debt collector is attempting to collect a debt and that information obtained will be used for that purpose, except where disclosure would tend to embarrass the debtor.

c. A false representation that the debt collector has information in his possession or something of value for the debtor, which is made to solicit or discover information about the debtor.

d. The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned at the time of making a demand for money.

e. An intentional misrepresentation, or a representation which tends to create a false impression of the character, extent or amount of a debt, or of its status in a legal proceeding.

f. A false representation, or a representation which tends to create a false impression, that a debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agency or official of the state or an agency of federal, state or local government.

g. The use or distribution or sale of a written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or other legally constituted or authorized authority, or which tends to create a false impression about its source, authorization or approval.

h. A representation that an existing obligation of the debtor may be increased by the addition of attorney's fees, investigation fees, service fees or other fees or charges, when in fact such fees or charges may not legally be added to the existing obligation.

i. A false representation, or a representation which tends to create a false impression, about the status or true nature of, or services rendered by, the debt collector or the debt collector's business.

5. A debt collector shall not engage in the following conduct to collect or attempt to collect a debt:

a. The seeking or obtaining of a written statement or acknowledgment in any form that specifies that a debtor's obligation is one chargeable upon the property of either husband or wife or both, under section 597.14, when the original obligation was not in fact so chargeable.

b. The seeking or obtaining of a written statement or acknowledgment in any form containing an affirmation of an obligation which has been discharged in bankruptcy, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor is not legally obligated to make the affirmation. However, this subsection does not prohibit the accepting of promises to pay that are voluntarily written and offered by a bankrupt debtor.

c. The collection of or the attempt to collect from the debtor a part or all of the debt collector's fee for services rendered, unless both of the following are applicable:

(1) The fee is reasonably related to the actions taken by the debt collector.

(2) The debt collector is legally entitled to collect the fee from the debtor.

d. The collection of or the attempt to collect interest or other charge, fee or expense incidental to the principal obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation and is legally chargeable to the debtor, or is otherwise legally chargeable.

e. A communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, within a reasonable time, or prior approval is obtained from the debtor's attorney or when the communication is a response in the ordinary course of business to the debtor's inquiry.

6. A debt collector shall not use or distribute, sell or prepare for use, a written communication that violates or fails to conform to United States postal laws and regulations.

87 Acts, ch 137, §4 HF 655
Subsection 5, paragraph c amended

CHAPTER 542

GRAIN DEALERS

542.1 Definitions.

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

1. "*Department*" means the department of agriculture and land stewardship.

2. "*Grain*" means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer) and field peas.

3. "*Grain dealer*" means a person who buys during any calendar month five hundred bushels of grain or more from the producers of the grain for purposes of resale, milling, or processing. However, "*grain dealer*" does not include a producer of grain who is buying grain for the producer's own use as seed or feed; a person solely engaged in buying grain future contracts on the board of trade; a person who purchases grain only for sale in a registered feed; a person who purchases grain for sale in a nonregistered customer-formula feed regulated by chapter 198, who purchases less than a total of fifty thousand bushels of grain annually from producers, and who is also exempt as an incidental warehouse operator under chapter 543; a person engaged in the business of selling agricultural seeds regulated by chapter 199; a person buying grain only as a farm manager; an executor, administrator, trustee, guardian, or conservator of an estate; a bargaining agent as defined in section 542A.1; or a custom livestock feeder.

4. "*Producer*" means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

5. "*Credit-sale contract*" means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price-later contracts.

6. "Custom livestock feeder" means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

7. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit sale contract as a seller.

8. "Bond" means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 9.

9. "Financial institution" means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively.

87 Acts, ch 147, §1 HF 411

1987 amendment to subsection 3 does not affect a claim for indemnification from the depositors and sellers indemnity fund, if the claim arose from a purchase of grain by a credit sale contract executed before July 1, 1987; 87 Acts, ch 147, §20 HF 411

Subsection 3 amended

542.3 License required—financial responsibility.

1. A person shall not engage in the business of a grain dealer in this state without having obtained a license issued by the department.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the grain dealer purchases any grain by credit-sale contract, or if the value of grain purchased by the grain dealer from producers during the grain dealer's previous fiscal year exceeds five hundred thousand dollars. Any other grain dealer may elect to be licensed as a class 1 grain dealer.

b. A class 2 license is required for any grain dealer not holding a class 1 license. A class 2 licensee whose purchases from producers during a fiscal year exceed a limit of five hundred thousand dollars in value shall file within thirty days of the date the limit is reached a complete application for a class 1 license. If a class 1 license is denied, the person immediately shall cease doing business as a grain dealer.

3. An application for a license to engage in business as a grain dealer shall be filed with the department and shall be in a form prescribed by the department. The application shall include the name of the applicant, its principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which records are maintained for transactions of the grain dealer. The application shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon a written request filed with the department, the department or a designated employee may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least fifty thousand dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 grain dealer if the person has a net worth of less than twenty-five thousand dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the department shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four-month period without good cause, in the manner provided in section 542.9. In addition, the department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a grain dealer submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the audited financial statement. If a grain dealer making the election engages in credit sale contracts,* the grain dealer shall also comply with the provisions of section 542.15, subsection 8.

c. The grain dealer shall have and maintain current assets equal to at least ninety percent of current liabilities or provide a deficiency bond or an irrevocable letter of credit under the following conditions:

(1) A grain dealer with current assets equal to at least forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or irrevocable letter of credit shall not be used for longer than six consecutive months in a twelve-month period.

(2) A grain dealer with current assets equal to less than forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or irrevocable letter of credit shall not be used for longer than thirty consecutive days in a twelve-month period.

5. In order to receive and retain a class 2 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least twenty-five thousand dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net deficiency. However, a person shall not be licensed as a class 2 grain dealer if the person has a net worth of less than ten thousand dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public

accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a grain dealer makes this election the department shall cause the grain dealer to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four-month period without good cause, in the manner provided in section 542.9. In addition, the department shall cause a grain dealer who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a grain dealer submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the audited financial statement. If a grain dealer making the election engages in credit sale contracts,* the grain dealer shall also comply with the provisions of section 542.15, subsection 8.

c. The grain dealer shall have and maintain current assets equal to at least ninety percent of current liabilities or provide a deficiency bond or an irrevocable letter of credit under the following conditions:

(1) A grain dealer with current assets equal to at least forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or irrevocable letter of credit shall not be used for longer than six consecutive months in a twelve-month period.

(2) A grain dealer with current assets equal to less than forty-five percent of current liabilities may provide a deficiency bond or an irrevocable letter of credit of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond or irrevocable letter of credit shall not be used for longer than thirty consecutive days in a twelve-month period.

6. The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification with respect to the financial resources of the applicant and the applicant's ability to pay producers for grain purchased from them.

7. a. When the net worth or current ratio of a licensee in good standing is less than that required by this section, the grain dealer shall correct the deficiency or file a deficiency bond or an irrevocable letter of credit within thirty days of written notice by the department. Unless the deficiency is corrected or the deficiency bond or irrevocable letter of credit is filed within thirty days, the grain dealer license shall be suspended.

b. If the department finds that the welfare of grain producers requires emergency action, and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered notwithstanding the thirty-day period otherwise allowed by paragraph "a".

8. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than ninety days' notice by certified mail to the secretary of agriculture and the principal.

87 Acts, ch 147, §2, 3 HF 411

*Credit sale contracts are no longer covered under fund; corrective legislation is pending

Subsection 4, paragraph b amended

Subsection 5, paragraph b amended

542.15 Credit-sale contracts.

1. A grain dealer shall not purchase grain by a credit-sale contract except as provided in this section.

2. A grain dealer shall give written notice to the department prior to engaging in the purchase of grain by credit-sale contracts. Notice shall be on forms provided by the department. The notice shall contain information required by the department.

3. All credit-sale contract forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing of the forms. A grain dealer shall maintain an accurate record of all credit-sale contract forms and numbers obtained by that dealer. The record shall include the disposition of each numbered form, whether by execution, destruction, or otherwise.

4. A grain dealer who purchases grain by credit-sale contracts shall maintain books, records and other documents as required by the department to establish compliance with this section.

5. In addition to other information as may be required, a credit-sale contract shall contain or provide for all of the following:

- a. The seller's name and address.
- b. The conditions of delivery.
- c. The amount and kind of grain delivered.
- d. The price per bushel or basis of value.
- e. The date payment is to be made.
- f. The duration of the credit-sale contract, which shall not exceed twelve months from the date the contract is executed.

6. Title to all grain sold by a credit-sale contract is in the purchasing dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a grain dealer license, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer, credit-sale contracts may be assigned to the purchaser of the business.

7. A grain dealer shall not purchase grain on credit during any time period in which the grain dealer's current assets are less than forty-five percent of current liabilities.

8. A licensed grain dealer who purchases grain by credit sale contract shall obtain from the seller a signed acknowledgement stating that the seller has received notice that grain purchased by credit sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgement shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

87 Acts, ch 147, §4 HF 411

1987 amendments to subsection 8 and chapter 543A do not affect a claim for indemnification from the grain depositors and sellers indemnity fund, if the claim arose from the purchase of grain by a credit sale contract executed before July 1, 1987; 87 Acts, ch 147, §20 HF 411

Subsection 8 stricken and rewritten

CHAPTER 543

WAREHOUSES FOR AGRICULTURAL PRODUCTS

543.4 Powers and duties of receiver.

1. When the department is appointed as receiver under this chapter the issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 543.6 shall be joined as a party defendant by the department. If required by the court, the issuer shall pay the indemnification proceeds or so much thereof as the court finds necessary into the court, and when so paid the issuer shall be absolutely discharged from any further liability under the bond or irrevocable letter of credit to the extent of the payment.

2. When appointed as receiver under this chapter the department is authorized to give notice in the manner specified by the court to persons holding warehouse receipts or other evidence of deposit issued by the licensee to file their claims within one hundred twenty days after the date of appointment. Failure to timely file a claim shall defeat the claim with respect to the issuer of a deficiency bond or of an irrevocable letter of credit, grain depositors and sellers indemnity fund created in chapter 543A, and any commodities or proceeds from the sale of commodities, except to the extent of any excess commodities or proceeds of sale remaining after all timely claims are paid in full.

3. When the court approves the sale of commodities, the department shall employ a merchandiser to effect the sale of those commodities. A person employed as a merchandiser must meet the following requirements:

a. The person shall be experienced or knowledgeable in the operation of warehouses licensed under this chapter; and if the person has ever held a license issued under this chapter, the person shall never have had that license suspended or revoked.

b. The person shall be experienced or knowledgeable in the marketing of agricultural products.

c. The person shall not be the holder of a warehouse receipt or scale weight ticket issued by the licensee, and shall not have a claim against the licensee whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the licensee or the licensee's business. The merchandiser shall be entitled to reasonable compensation as determined by the department, payable out of funds appropriated for operating expenses of the department. A sale of commodities shall be made in a commercially reasonable manner and under the supervision of the warehouse division of the department. The department shall provide for the payment out of appropriations to the department of all expenses incurred in handling and disposing of commodities. The department shall have authority to sell the commodities, any provision of chapter 554 to the contrary notwithstanding, and any commodities so sold shall be free of all liens and other encumbrances.

4. The plan of disposition, as approved by the court, shall provide for the distribution of the stored commodities, or the proceeds from the sale of commodities, or the proceeds from any insurance policy, deficiency bond, or irrevocable letter of credit, less expenses incurred by the department in connection with the receivership, to depositors as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

5. The department may, with the approval of the court, continue the operation of all or any part of the business of the licensee on a temporary basis and take any other course of action or procedure which will serve the interests of the depositors.

6. The department is entitled to reimbursement out of commodities or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of stored commodities, and for all other costs directly attributable to the receivership. The right of reimbursement of the department is prior to any claims against the commodities or proceeds of sales of commodities, and constitutes a claim against a deficiency bond or irrevocable letter of credit.

7. If the approved plan of disposition requires a distribution of cash proceeds, the department shall submit to the court a proposed plan of distribution of those proceeds. Upon notice and hearing as required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the department, the department shall be discharged and the receivership terminated.

8. At the termination of the receivership the department shall file a final report containing the details of its actions, together with such additional information as the court may require.

87 Acts, ch 147, §5 HF 411
Subsection 4 amended

543.6 Issuance of license and financial responsibility.

1. The department is authorized, upon application to it, to issue to any warehouse operator or to any person about to become a warehouse operator a license or licenses for the operation of a warehouse or warehouses in accordance with the provisions of this chapter and such rules as may be made by the department under the authority of section 543.5. A single license to operate two or more warehouses located within a twenty-five mile radius of a central office may be issued.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the storage capacity of a warehouse is more than one hundred thousand bushels.

b. A class 2 license is required for a warehouse that is not required to have a class 1 license.

3. An application for a warehouse license shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and net worth of the applicant. The financial statement must be prepared according to normally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon written request, the department or a designated employee may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 warehouse operator if the person has a net worth of less than twenty-five thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a warehouse operator makes this election the department shall cause the warehouse to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four-month period without good cause, in the manner provided in section 543.2. In addition, the department shall cause a warehouse operator who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a ware-

house operator submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the certified financial statement.

5. In order to receive and maintain a class 2 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 2 warehouse operator if the person has a net worth of less than ten thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph, and if a warehouse operator makes this election the department shall cause the warehouse to be inspected not less than twice during each twelve-month period, but not more than five times in a twenty-four-month period without good cause, in the manner provided in section 543.2. In addition, the department shall cause a warehouse operator who makes this election to submit to the department, in a form and manner prescribed by the department, an interim financial statement no less than once in every three-calendar-month period. However, the department shall not require that a warehouse operator submit more than one such report of a certified public accountant per year that is based upon a review performed in lieu of the qualified financial statement.

6. The department may adopt rules governing the timing and form of financial statements to be submitted to it. The department may require additional information or verification with respect to the financial resources of the applicant or licensee and the applicant's or licensee's ability to maintain the quantity and quality of stored grain.

7. If an applicant has had a license under chapter 542, 542A or 543 revoked for cause within the past three years, or has been convicted of a felony involving violations of chapter 542, 542A or 543, or is owned or controlled by a person who has had a license so revoked or who has been so convicted, the department may deny a license to the applicant.

8. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the department and the principal.

CHAPTER 543A

GRAIN DEPOSITORS AND SELLERS INDEMNIFICATION

1987 amendments do not affect a claim for indemnification
from the fund, if the claim arose from a purchase of grain
by a credit sale contract executed before July 1, 1987;
87 Acts, ch 147, §20 HF 411

543A.1 Definitions.

1. "*Assessable grain*" means all grain to which a licensed grain dealer obtains title except if title transfers by credit sale contract, and all grain received by a licensed warehouse operator. However, assessable grain does not include the following:

a. Grain purchased by an Iowa licensed grain dealer from another licensed grain dealer, regardless of which jurisdiction licenses the other grain dealer.

b. Grain deposited in a licensed grain warehouse for custom drying, cleaning, conditioning, or processing if the grain is redelivered to the depositor immediately, as defined by rules adopted by the department.

2. "*Board*" means the Iowa grain indemnity fund board created in section 543A.4.

3. "*Department*" means the department of agriculture and land stewardship.

4. "*Depositor*" means a person who deposits grain in a state warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a state warehouse, or who is lawfully entitled to possession of the grain.

5. "*Fund*" means the grain depositors and sellers indemnity fund created in section 543A.3.

6. "*Grain*" means wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act, but does not include agricultural products other than bulk grain.

7. "*Licensed grain dealer*" means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 542.3.

8. "*Licensed warehouse operator*" means the same as in section 543.1.

9. "*Loss*" means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.

10. "*Seller*" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, but excludes a person who executes a credit sale contract as a seller.

87 Acts, ch 147, §8-10 HF 411

New subsection 1 and former subsections 1-5 renumbered as 2-6

Subsections 4 and 5 amended

Former subsections 6 and 7 stricken and former subsections 8-11 renumbered as 7-10

Subsection 10 amended

543A.2 Persons participating in fund.

All licensed grain dealers and licensed warehouse operators shall participate in the fund.

87 Acts, ch 147, §11 HF 411

Section amended

543A.3 Grain depositors and sellers indemnity fund.

1. The grain depositors and sellers indemnity fund is created in the state treasury. The general fund of the state is not liable for claims presented against the grain depositors and sellers indemnity fund under section 543A.6. The fund consists of a per-bushel fee on assessable grain remitted by licensed grain dealers and licensed warehouse operators; an annual fee charged to and remitted by licensed grain dealers and licensed warehouse operators; sums collected by the department by legal action on behalf of the fund; and interest, property, or securities acquired through the use of moneys in the fund. The moneys collected

under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 543A.6 and to pay the administrative costs of this chapter.

2. The grain dealer or warehouse operator shall forward the per-bushel fee to the department in the manner and using the forms prescribed by the department. If the per-bushel fee has not been received by the department by the date required by the department, the grain dealer or warehouse operator is subject to a penalty of ten dollars for each day the grain dealer or warehouse operator is delinquent. If the per-bushel fee has not been received by the department within thirty days after the payment was due, the grain dealer's or warehouse operator's license shall be suspended. The per-bushel fee shall be collected only once on each bushel of grain.

3. a. All licensed grain dealers and licensed warehouse operators shall annually remit a fee to be deposited into the fund which is determined as follows:

(1) For class 1 grain dealers, five hundred dollars.

(2) For class 2 grain dealers, two hundred fifty dollars.

(3) For warehouse operators or participating federally licensed grain warehouses:

(a) For intended storage of bulk grain in any quantity less than twenty thousand bushels, forty-two dollars plus seven dollars for each two thousand bushels or fraction thereof in excess of twelve thousand bushels.

(b) For intended storage of bulk grain in any quantity not less than twenty thousand bushels and not more than fifty thousand bushels, seventy dollars plus four and a half dollars for each three thousand bushels or fraction thereof in excess of twenty thousand bushels.

(c) For intended storage of bulk grain in any quantity not less than fifty thousand bushels and not more than seventy thousand bushels, one hundred fifteen dollars plus four and a half dollars for each four thousand bushels or fraction thereof in excess of fifty thousand bushels.

(d) For intended storage of bulk grain in any quantity not less than seventy thousand bushels, one hundred thirty-seven and a half dollars plus two and three-quarters dollars for each five thousand bushels or fraction thereof in excess of seventy thousand bushels.

b. Payment of the required amount shall be made before the grain dealer's or warehouse operator's license is renewed.

4. A person who applies for a grain dealer's or warehouse operator's license who has not paid the full fee required by subsection 3, shall pay that amount before the license is issued.

5. All disbursements from the fund shall be paid by the treasurer of state pursuant to vouchers authorized by the department.

6. The administrative costs of this chapter shall be paid from the fund after approval of the costs by the board.

87 Acts, ch 147, §12-15 HF 411
 Subsections 1 and 2 amended
 Subsection 3, paragraph a, unnumbered paragraph 1 amended
 Subsection 3, paragraph b amended
 Subsection 4 amended

543A.4 Indemnity fund board.

The Iowa grain indemnity fund board is established to advise the department on matters relating to the fund and to perform the duties provided it in this chapter. The board is composed of the secretary of agriculture or a designee who shall serve as president; the commissioner of insurance or a designee who shall serve as secretary; the state treasurer or a designee who shall serve as treasurer; and four representatives of the grain industry appointed by the governor, subject to confirmation by the senate, two of whom shall be representatives of producers and who shall be actively participating producers, and two of whom shall be representatives of grain dealers and warehouse operators and who shall be

actively participating grain dealers and warehouse operators, each of whom shall be selected from a list of three nominations made by the secretary of agriculture. The term of membership of the grain industry representatives is three years, and the representatives are eligible for reappointment. However, only actively participating producers, and grain dealers and warehouse operators are eligible for reappointment. The grain industry representatives are entitled to forty dollars per diem for each day spent in the performance of the duties of the board, plus actual expenses incurred in the performance of those duties. Four members of the board constitute a quorum, and the affirmative vote of four members is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all the rights and perform all the duties of the board.

87 Acts, ch 147, §16 HF 411
Section amended

543A.5 Adjustments to fee.

1. The board shall review annually the debits of and credits to the grain depositors and sellers indemnity fund created in section 543A.3 and shall make any adjustments in the per-bushel fee required under section 543A.3, subsection 2, and the dealer-warehouse fee required under section 543A.3, subsection 3, that are necessary to maintain the fund within the limits established under this section. Not later than the first day of May of each year, the board shall determine the proposed amount of the per-bushel fee based on the expected volume of grain on which the fee is to be collected and that is likely to be handled under this chapter, and shall also determine any adjustment to the dealer-warehouse fee. The board shall make any changes in the previous year's fees in accordance with chapter 17A. Changes in the fees shall become effective on the following first day of July. The per-bushel fee shall not exceed one-quarter cent per bushel on all assessable grain. Until the per-bushel fee is adjusted or waived as provided in this section, the per-bushel fee is one-quarter cent on all assessable grain.

2. If, at the end of any fiscal year, the assets of the fund exceed six million dollars, less any encumbered balances or pending or unsettled claims, the per-bushel fee required under section 543A.3, subsection 2, and the dealer-warehouse fee required under section 543A.3, subsection 3, shall be waived until the board reinstates the fees. The board shall reinstate the fees if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

87 Acts, ch 147, §17 HF 411
Section amended

543A.6 Claims against fund.

1. A depositor or seller may file a claim concerning assessable grain with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board. A claim shall not be filed prior to the earlier of the revocation, termination, or cancellation of the license of the grain dealer or warehouse operator, or the filing of a petition in bankruptcy by a grain dealer or warehouse operator. However, to be timely a claim shall be filed within one hundred twenty days of the revocation, termination, or cancellation of the license of the grain dealer or warehouse operator. The value of a loss is to be measured as follows:

a. The board shall determine the dollar value of a claim incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered to the licensed warehouse operator or grain dealer. The value shall be based on the average fair market price being paid for the grain to producers by the three licensed grain dealers nearest the warehouse operator or grain dealer on the earlier of the following:

- (1) The date of license revocation, termination, or cancellation.

(2) The date on which the licensed warehouse operator or licensed grain dealer filed a petition in bankruptcy. However, the board may accept the valuation of a claim as determined by a court of competent jurisdiction as the value of the claim. All depositors filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

b. The dollar value of a claim incurred by a seller who has sold grain or delivered grain for sale or exchange and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of the sale. However, the board may accept the valuation of a claim as determined by a court of competent jurisdiction as the value of the claim. The value of the loss is the outstanding balance on the validated claim at the time of payment from the fund.

2. The grain depositors and sellers indemnity fund is liable to a depositor or seller for a claim which arises on or after May 15, 1986, for ninety percent of the loss, as determined under subsection 1, but not more than one hundred fifty thousand dollars per claimant.

3. The board shall determine the validity of all claims presented against the fund. A depositor or seller whose claim has been refused by the board may appeal the refusal to either the district court of Polk county or the district court of the county in which the depositor or seller resides. The board shall provide for payment from the fund to a depositor or seller whose claim has been found to be valid.

4. If at any time the fund does not contain sufficient assets to pay valid claims, the department shall hold those claims for payment until the fund again contains sufficient assets. Claims against the fund shall be paid in the order in which they are found to be valid. However, no claims shall be paid before the fund initially reaches one million dollars.

5. In the event of payment of a loss under this section, the fund is subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the depositor or seller against any person regarding the loss. The depositor or seller shall render all necessary assistance to aid the department and the board in securing the rights granted in this section. No action or claim initiated by a depositor or seller and pending at the time of payment from the fund shall be compromised or settled without the consent of the board.

87 Acts, ch 147, §18, 19 HF 411
1987 amendments do not affect a claim for indemnification from the fund, if the claim arose from the purchase of grain by a credit sale contract executed before July 1, 1987; 87 Acts, ch 147, §20
Subsections 1, 2, 3 and 5 amended

CHAPTER 546

DEPARTMENT OF COMMERCE

546.2 Department of commerce.

1. A department of commerce is created to coordinate and administer the various regulatory, service, and licensing functions of the state relating to the conducting of business or commerce in the state.

2. The chief administrative officer of the department is the director. The director shall be appointed by the governor, subject to the confirmation of the senate, and shall serve at the pleasure of the governor. The director is subject to reconfirmation after four years in office. The director shall be appointed on the basis of executive and administrative abilities but shall not have been an officer or employee of any bank, credit union, savings and loan association, or insurance company. The salary shall be fixed by the governor within a range established by the general assembly.

3. The department is administratively organized into the following divisions:
 - a. Banking.
 - b. Credit union.
 - c. Savings and loan.
 - d. Utilities.
 - e. Insurance.
 - f. Alcoholic beverages.
 - g. Professional licensing and regulation.
4. The director shall have the following responsibilities:
 - a. To establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.
 - b. To assemble a department structure and strategic plan that will provide optimal decentralization of responsibilities and authorities with sufficient coordination for appropriate growth and development.
 - c. To coordinate personnel services and shared administrative support services to assure maximum support and assistance to the divisions.
 - d. To coordinate the development of an annual budget which quantifies the operational plans of the divisions.
 - e. To identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.
 - f. To maintain monitoring and control systems, procedures, and policies which will permit each level of responsibility to quickly and precisely measure its results with its plan and standards.
5. The chief administrative officer of each division shall have the following responsibilities:
 - a. To make rules pursuant to chapter 17A except to the extent that rulemaking authority is vested in a policymaking commission.
 - b. To hire, allocate, develop, and supervise employees of the division necessary to perform duties assigned to the division by law.
 - c. To supervise and direct personnel and other resources to accomplish duties assigned to the division by law.
 - d. To establish fees assessed to the regulated industry except to the extent this power is vested in a policymaking commission.
6. Each division is responsible for policymaking and enforcement duties assigned to the division under the law. Except as provided in section 546.10, subsection 3:
 - a. Each division shall adopt rules pursuant to chapter 17A to implement its duties.
 - b. Decisions by the divisions are final agency actions pursuant to chapter 17A.

87 Acts, ch 234, §438 HF 671

Subsection 3, former paragraph d stricken and paragraphs e through h relettered as d through g

546.6 Gaming division. Repealed by 87 Acts, ch 234, §440. HF 671 See §10A.701.

546.11 Administrative services trust fund created.

There is created in the office of the treasurer of state for the department of commerce an administrative services trust fund. Moneys paid to the department by the divisions for administrative services shall be credited to the fund. All costs

for administrative services provided by the department to the respective divisions shall be paid from this fund, subject to appropriation by the general assembly.

87 Acts, ch 234, §439 HF 671
NEW section

CHAPTER 551

UNFAIR DISCRIMINATION

551.12 Price discrimination—sale or lease of motor vehicles. Repealed by 87 Acts, ch 3, §1. SF 18
Effective February 26, 1987

CHAPTER 554

UNIFORM COMMERCIAL CODE

554.9307 Protection of buyers of goods.

1. Except as provided in subsection 4, a buyer in the ordinary course of business as defined in section 554.1201, subsection 9, takes free of a security interest created by that person's seller even though the security interest is perfected and even though the buyer knows of its existence. For purposes of this section, a buyer or buyer in the ordinary course of business includes any commission merchant, selling agent, or other person engaged in the business of receiving livestock as defined in section 189A.2 on commission for or on behalf of another.

2. In the case of consumer goods, a buyer takes free of a security interest even though perfected if the buyer buys without knowledge of the security interest, for value and for the buyer's own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

3. A buyer other than a buyer in ordinary course of business (subsection 1 of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five-day period.

4. *a.* A buyer in the ordinary course of business buying farm products from a debtor engaged in farming operations takes subject to a security interest created by the debtor, if within one year before the sale of the farm products the buyer receives prior written notice of the security interest which complies with this subsection and the buyer fails to perform the payment obligations specified in the notice.

b. A written notice complies with this subsection if the written notice is delivered to the buyer by the secured party or the debtor who sells the farm products and it complies with the following:

- (1) Is an original or reproduced copy of the written notice; and
- (2) Is signed by either the secured party or the debtor, who transmits the notice to the potential buyer.
- (3) Contains all of the following:
 - (a) The name and address of the secured party.
 - (b) The name and address of the person indebted to the secured party.
 - (c) The social security number of the debtor or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the debtor.

(d) A description of the farm products subject to the security interest created by the debtor, including the amount of the products where applicable.

(e) An identification of the crop year in which the farm products were produced.

(f) An identification of the county in which the farm products were produced.

(g) A reasonable description of the property on which the farm products were produced.

(h) A statement of any payment obligations imposed on the buyer by the secured party as a condition for waiver or release of the security interest.

c. The secured party may require, in documents creating the security interest, that a debtor engaged in farming operations, who creates a security interest in a farm product, furnish to the secured party a list of potential buyers to or through whom the debtor may sell the farm product. Before a potential buyer who is not on the list may receive from the secured party written notice of a security interest in a farm product, the secured party shall notify the debtor of the name and address of the potential buyer.

d. A written notice shall be amended by the secured party within three months of any material change. The amended notice must be signed and transmitted to the potential buyer similarly to the original notice, by either the secured party or the debtor selling the farm products. The notice lapses on the earlier of either one year from the date the notice was received by the buyer or the date the buyer receives a notice signed by the secured party that the security interest has lapsed.

5. If the notice to a potential buyer by a secured party or debtor satisfies the requirements of subsection 4, paragraph "b", and the debtor sells the farm products subject to the security interest to a buyer not included on the list as a potential buyer as required in subsection 4, paragraph "c", or to any other buyer, if the name and address of the buyer was not received by the debtor pursuant to subsection 4, paragraph "c", then the debtor is subject to a civil penalty of the greater of either five thousand dollars or fifteen percent of the value or benefits received by the debtor for the farm products described in the documents creating the security interest.

However, the penalty provided in this subsection shall be imposed on the debtor in lieu of but not in addition to the penalty described in the federal Food Security Act of 1985, Pub. L. No. 99-198, §1324. A penalty shall not be imposed on the debtor if the debtor has complied with any of the following:

a. Notified the secured party in writing of the identity of the buyer at least seven days prior to the sale.

b. Accounted to the secured party for the proceeds of the sale not later than ten days after the sale.

6. For purposes of this section, written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person with a written receipt returned, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is mailed to accept delivery of the notice shall be considered receipt.

87 Acts, ch 38, §1-5 SF 13

1987 amendments to subsections 1 and 4-9 effective May 4, 1987, and apply retroactively to security interests granted on or after December 23, 1986; if a security interest was granted before December 23, 1986, the amendments apply retroactively on and after September 1, 1987, to those security interests; 87 Acts, ch 38, §6 SF 13

Subsection 1 stricken and rewritten

Subsection 4 stricken and rewritten

Subsection 5 stricken and rewritten

Subsection 6 stricken and rewritten

Subsections 7-9 stricken

CHAPTER 557B

MEMBERSHIP CAMPGROUNDS

557B.1 Definitions.

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

1. “*Advertisement*” means an attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into an obligation or acquire a title or interest in a membership camping contract.

2. “*Affiliate*” means any person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

3. “*Blanket encumbrance*” means any mortgage, deed of trust, option to purchase, vendor’s lien or interest under a contract or agreement of sale, judgment lien, federal or state tax lien, or any other material lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey all or part of a campground located in this state, made available to purchasers by the membership camping operator, and which authorizes, permits, or requires the foreclosure or other disposition of the campground. “*Blanket encumbrance*” also includes the lessor’s interest in a lease of all or part of a campground which is located in this state and which is made available to purchasers by a membership camping operator. “*Blanket encumbrance*” does not include a lien for taxes or assessments levied by a public body which are not yet due and payable.

4. “*Business day*” means any day except Saturday, Sunday, or a legal holiday.

5. “*Campground*” means real property made available to persons for camping, whether by tent, trailer, camper, cabin, recreational vehicle, or similar device and includes the outdoor recreational facilities located on the real property. “*Campground*” does not include a mobile home park as defined in section 135D.1.

6. “*Controlling persons of a membership camping operator*” means each director and officer and each owner of twenty-five percent or more of the stock of the operator, if the operator is a corporation; and each general partner and each owner of twenty-five percent or more of the partnership or other interests, if the operator is a general or limited partnership; or other person doing business as a membership camping operator.

7. “*Membership camping contract*” means an agreement offered or sold within this state evidencing a purchaser’s right to use a campground of a membership camping operator for more than thirty days during the term of the agreement.

8. “*Membership camping operator*” or “*operator*” means any person other than one who is tax exempt under section 501(c)(3) of the Internal Revenue Code, as defined in section 422.3, who owns or operates a campground and offers or sells membership camping contracts paid for by a fee or periodic payments. “*Membership camping operator*” does not include the operator of a mobile home park as defined in chapter 135D.

9. “*Offer*” means an inducement, solicitation, or attempt to encourage a person to acquire a membership camping contract.

10. “*Purchaser*” means a person who enters into a membership camping contract with a membership camping operator and obtains the right to use the campground owned or operated by the membership camping operator.

87 Acts, ch 181, §5 HF 520
NEW section

557B.2 Registration requirement.

A person shall not offer or sell a membership camping contract in this state unless one of the following is applicable:

1. The membership camping contract is covered by a membership camping registration as provided in this chapter.

2. The membership camping contract or the transaction is exempted under section 557B.4.

87 Acts, ch 181, §6 HF 520
NEW section

557B.3 Application for registration—amendments—renewal.

1. Filing fees, as prescribed in section 557B.7, shall accompany the application for registration, renewal of a registration, or any amendment of a registration of membership camping contracts.

2. The application for registration shall be filed with the attorney general and shall include all of the following:

a. The membership camping operator's name and the address of its principal place of business, the form, date of organization, jurisdiction of its organization, and the name and address of each of its offices in this state.

b. A copy of the membership camping operator's articles of incorporation, partnership agreement, or joint venture agreement as contemplated or currently in effect.

c. The name, address, and principal occupation for the past five years of the membership camping operator and of each controlling person of the membership camping operator and the extent of each such person's interest in the membership camping operator as of a specified date within thirty days prior to the filing of the application.

d. A list of affiliates of the membership camping operator, including the names and addresses of officers and directors.

e. A legal description of each campground owned or operated by the membership camping operator which is represented to be available for use by purchasers and a statement identifying the existing amenities at each campground and the planned amenities represented as to be available for use by purchasers in the future at each campground. If future amenities are represented, the statement must include the estimated cost and schedule for completion of those amenities.

f. A brief description of the membership camping operator's ownership of or other right to use the campground properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the membership camping operator to use the property and any material provisions of the agreements which restrict a purchaser's use of the property.

g. If a blanket encumbrance materially adversely affects a campground, a legal description of the encumbrance and a description of the steps taken to protect purchasers in accordance with section 557B.12 in case of failure to discharge the encumbrance.

h. A brief description of all payments of a purchaser under a membership camping contract, including initial fees and any further fees, charges, or assessments, together with any provision for changing the payments.

i. A description of any restraints on the transfer of membership camping contracts, including a complete description of any resale agreement or policy.

j. A brief description of the policies relating to the availability of camping sites and whether reservations are required.

k. A brief description of any grounds for forfeiture of a purchaser's membership camping contract.

l. A sample copy of each membership camping contract to be offered or sold in this state and the purchase price of each type, and if the price varies, the reason for the variance.

m. A sample copy of each instrument which a purchaser will be required to execute, and a copy of the disclosure statement required by section 557B.8.

n. A statement of the total number of membership camping contracts for each campground intended to be sold in this state and the method used to determine

this number, including a statement of commitment that this number will not be exceeded unless it is disclosed by an amendment to the registration.

a A summary or copy of the articles, bylaws, rules, restrictions, or covenants regulating the purchaser's use of each campground and the facilities located on each property, including a statement of whether and how the articles, bylaws, rules, restrictions, or covenants may be changed.

p A brief description of any reciprocal agreement allowing purchasers to use camping sites, facilities, or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract.

q Financial statements of the membership camping operator prepared in accordance with generally accepted accounting principles which shall include a financial statement for the most recent fiscal year audited by an independent certified public accountant, and an unaudited financial statement for the most recent fiscal quarter. The attorney general may waive the requirement for an audited statement if the statement has been prepared by an independent certified public accountant and the attorney general is satisfied with the reliability of the statement and with the ability of the membership camping operator to meet future commitments.

The application shall be signed by the membership camping operator or an officer or a general partner of the membership camping operator, or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney must be included with the application.

An application for registration shall be amended within twenty-five days of any material change in the information included in the application. A material change includes any change which significantly reduces or terminates either the applicant's or the purchaser's right to use the campground or any of the facilities described in the membership camping contract, but does not include minor changes covering the use of the campground, its facilities, or the reciprocal program.

The registration of the membership camping operator must be renewed annually by filing an application for renewal with the required fee not later than thirty days prior to the anniversary of the current registration. The application shall include all changes which have occurred in the information included in the application previously filed.

Registration with the attorney general does not constitute approval or endorsement by the attorney general of the membership camping operator, the membership camping contract, or the campground, and any attempt by the membership camping operator to indicate that registration constitutes such approval or endorsement is unlawful.

87 Acts, ch 181, §7 HF 520
NEW section

557B.4 Exemptions.

The following transactions are exempt from registration:

1. An offer, sale, or transfer by any one person of not more than one membership camping contract in any twelve-month period.
2. An offer or sale by a government, government agency, or other subdivision of government.
3. A bona fide pledge of a membership camping contract.
4. Transactions subject to regulation pursuant to chapter 557A.

87 Acts, ch 181, §8 HF 520
NEW section

557B.5 Effective date of registration.

The application for registration automatically becomes effective upon the expiration of forty-five calendar days following filing of a completed application with the attorney general unless one of the following occurs:

1. The application is denied under section 557B.6.
2. The attorney general grants the registration effective as of an earlier date.
3. The applicant consents to a delay of the effective date.

If the attorney general requests additional information with respect to the application, the application becomes effective upon the expiration of fifteen business days following the filing with the attorney general of the additional information unless an order pursuant to section 557B.6 is issued or unless declared effective on an earlier date by order of the attorney general.

87 Acts, ch 181, §9 HF 520
NEW section

557B.6 Denial, suspension, or revocation of registration or application—fines.

The attorney general may by order deny, suspend, or revoke a membership camping operator's application or registration or impose a fine of not more than five thousand dollars or a combination of suspension or revocation and fine, if the attorney general finds that the order is for the protection of prospective purchasers or purchasers of membership camping contracts and that one of the following applies:

1. The membership camping operator's advertising or sales techniques or trade practices have been or are deceptive, false, or misleading.
2. The membership camping operator is not financially responsible or has insufficient capital to warrant its offering or selling membership camping contracts in this state. The attorney general may require a surety bond or, if one is unobtainable, other evidence of financial assurances satisfactory to the attorney general.
3. The membership camping operator's application for registration or an amendment to the registration is incomplete in a material respect.
4. The membership camping operator has failed to file timely amendments to the application for registration as required by section 557B.3.
5. The membership camping operator has failed to comply with any provision of this chapter that materially affects the rights of purchasers, prospective purchasers, or owners of membership camping contracts.
6. The membership camping operator has made a false or misleading representation or concealed material facts in any document or information filed with the attorney general.
7. The membership camping operator has represented or is representing to purchasers in connection with the offer to sell membership camping contracts that a particular facility is planned, without reasonable expectation that the facility will be completed within a reasonable time or without the apparent means to ensure its completion.

An order denying, suspending, or revoking a registration or imposing a fine shall be sent by certified mail, return receipt requested, to the applicant or registrant. The applicant or registrant has thirty calendar days from the date of mailing the order to request a hearing pursuant to chapter 17A. If a hearing is not requested within thirty days and is not ordered by the attorney general, the order shall remain in effect until modified or vacated by the attorney general. However, if the attorney general finds that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order, summary suspension of a membership camping operator's registration may be ordered. If the membership camping operator desires to contest the summary order, the membership camping operator must request a hearing within fifteen calendar days of service of the summary order. If so requested, the hearing must

be instituted within twenty calendar days of the request and the contest of the summary order must be promptly determined.

87 Acts, ch 181, §10 HF 520
NEW section

557B.7 Fees.

Each application for registration of an offer or sale of membership camping contracts and each application for amendment or renewal of a registration shall be accompanied by a fee determined by the attorney general which shall be sufficient to defray the costs of administering this chapter.

87 Acts, ch 181, §11 HF 520
NEW section

557B.8 Disclosures to purchasers.

A membership camping operator who is subject to the registration requirements of section 557B.3 shall provide a disclosure statement to a purchaser or prospective purchaser before the person signs a membership camping contract or gives any money or thing of value for the purchase of a membership camping contract.

1. The front cover or first page of the disclosure statement shall contain only the following, in the order stated:

a. **"MEMBERSHIP CAMPING OPERATOR'S DISCLOSURE STATEMENT"** printed at the top in boldfaced type of a minimum size of ten points.

b. The name and principal business address of the membership camping operator and any material affiliate of the membership camping operator.

c. A statement that the membership camping operator is in the business of offering for sale membership camping contracts.

d. A statement, printed in boldfaced type of a minimum size of ten points, which reads as follows:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED IN THIS DOCUMENT ARE ONLY SUMMARY IN NATURE. YOU AS A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.

e. A statement, printed in boldfaced type of a minimum size of ten points, which reads as follows:

IF YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL THE CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE THIRD BUSINESS DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED OR THE DATE OF RECEIPT OF THIS DISCLOSURE STATEMENT, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU AS THE PURCHASER MUST HAND DELIVER OR MAIL NOTICE OF YOUR INTENT TO CANCEL TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE

MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEYS PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT, UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE.

2. The following pages of the disclosure statement shall contain all of the following in the order stated:

a. The name, principal occupation, and address of every director, partner, or controlling person of the membership camping operator.

b. A brief description of the nature of the purchaser's right or license to use the campground and the facilities which are to be available for use by purchasers.

c. A brief description of the membership camping operator's experience in the membership camping business, including the length of time the operator has been in the membership camping business.

d. The location of each of the campgrounds which is to be available for use by purchasers and a brief description of the facilities at each campground which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that are or will be available to nonpurchasers shall also be provided. The description shall include, but need not be limited to, the number of campsites in each park, the number of campsites in each park with full or partial hookups, swimming pools, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, and grocery stores.

e. The fees and charges that purchasers are or may be required to pay for the use of the campground or any facilities.

f. Any initial or special fee due from the purchaser, together with a description of the purpose and method of calculating the fee.

g. The extent to which financial arrangements, if any, have been provided for the completion of facilities, together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete the facilities.

h. The names of the managing entity, if any, and the significant terms of any management contract, including but not limited to, the circumstances under which the membership camping operator may terminate the management contract.

i. A summary or copy, whether by way of supplement or otherwise, of the rules, restrictions, or covenants regulating the purchaser's use of the campground and the facilities which are to be available for use by the purchaser, including a statement of whether and how the rules, restrictions, or covenants may be changed.

j. A brief description of the policies covering the availability of camping sites, the availability of reservations and the conditions under which they are made.

k. A brief description of any grounds for forfeiture of a purchaser's membership camping contract.

l. A statement of whether the membership camping operator has the right to withdraw permanently from use, all or any portion of any campground devoted to membership camping and, if so, the conditions under which the withdrawal is to be permitted.

m. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser, including a statement concerning whether the purchaser's participation in any reciprocal program is dependent on

the continued affiliation of the membership camping operator with that reciprocal program and whether the membership camping operator reserves the right to terminate such affiliation.

n. As to all memberships offered by the membership camping operator at each campground, all of the following:

- (1) The form of membership offered.
- (2) The types of duration of membership along with a summary of the major privileges, restrictions, and limitations applicable to each type.
- (3) Provisions that have been made for public utilities at each campsite including water, electricity, telephone, and sewage facilities.

o. A statement of the assistance, if any, that the membership camping operator will provide to the purchaser in the resale of membership camping contracts and a detailed description of how any such resale program is operated.

p. The following statement, printed in boldfaced type of a minimum size of ten points:

REGISTRATION OF THE MEMBERSHIP CAMPING OPERATOR WITH THE IOWA ATTORNEY GENERAL DOES NOT CONSTITUTE AN APPROVAL OR ENDORSEMENT BY THE ATTORNEY GENERAL OF THE MEMBERSHIP CAMPING OPERATOR, THE MEMBERSHIP CAMPING CONTRACT, OR THE CAMPGROUND.

The membership camping operator shall promptly amend the disclosure statement to reflect any material change and shall promptly file any such amendments with the attorney general.

87 Acts, ch 181, §12 HF 520
NEW section

557B.9 Membership camping contracts.

The membership camping operator shall deliver to the purchaser a fully executed copy of a membership camping contract, in writing, which contract shall include at least the following information:

1. The name of the membership camping operator and the address of its principal place of business.
2. The actual date the membership camping contract is executed by the purchaser.
3. The total financial obligation imposed on the purchaser by the contract, including the initial purchase price and any additional charge the purchaser may be required to pay.
4. A statement that the membership camping operator is required by law to provide each purchaser with a copy of the membership camping operator's disclosure statement prior to execution of the contract and that failure to do so is a violation of the law.
5. The full name of each salesperson involved in the execution of the membership camping contract.

6. In immediate proximity to the space reserved for the purchaser's signature, a conspicuous statement printed in boldfaced type of a minimum size of ten points:

YOU THE PURCHASER MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME WITHIN THREE BUSINESS DAYS FOLLOWING THE DATE OF EXECUTION OF THE CONTRACT OR THE RECEIPT OF THE DISCLOSURE STATEMENT FROM THE MEMBERSHIP CAMPING OPERATOR, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE CONTRACT, HAND DELIVER OR MAIL A POSTAGE PREPAID WRITTEN CANCELLATION TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS LISTED ON THIS CONTRACT. UPON CANCELLATION AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE, YOU WILL RECEIVE A REFUND OF

ALL MONEY PAID WITHIN THIRTY CALENDAR DAYS AFTER THE MEMBERSHIP CAMPING OPERATOR RECEIVES NOTICE OF YOUR CANCELLATION.

87 Acts, ch 181, §13 HF 520
NEW section

557B.10 Purchaser's right of cancellation.

A purchaser has the right to cancel a membership camping contract within three business days following the date the contract is executed or within three business days following the date of delivery of the written disclosure statement required by section 557B.8, whichever event is later.

1. The right to cancel may not be waived and any attempt to obtain such a waiver is unlawful.

2. A purchaser may cancel the contract by hand delivering a written statement of cancellation or by mailing such a statement to the membership camping operator. The cancellation is deemed effective upon mailing.

3. Upon cancellation and return of all membership and reciprocal use materials furnished at the time of purchase, the membership camping operator shall refund to the purchaser all payment and other consideration given by the purchaser. The refund shall be made within thirty calendar days after the membership camping operator receives notice of the cancellation and may, where payment has been made by credit card, be made by an appropriate credit to the purchaser's account. If the membership camping operator fails to refund the payment or other consideration given within the thirty-day period, it is presumed that the membership camping operator is willfully and wrongfully retaining the payment or other consideration. The willful retention of a payment or other consideration in violation of this section renders the membership camping operator liable for double the amount of that portion of the payment or other consideration wrongfully withheld from the purchaser together with reasonable attorney fees and court costs.

4. The membership camping operator or salesperson shall orally inform the purchaser at the time the contract is executed of the right to cancel the contract as provided in this section.

87 Acts, ch 181, §14 HF 520
NEW section

557B.11 Purchaser's remedies.

A purchaser's remedy for errors in or omissions from the membership camping contract, the materials delivered to the purchaser at the time of sale, or any of the disclosures required in section 557B.13 is limited to a right of cancellation and refund of the payment made or consideration given by the purchaser. However, this limitation does not apply to errors or omissions from the contract or disclosures or other requirements of this chapter which are part of a scheme to willfully misstate or omit the information required. Reasonable attorney fees shall be awarded to the prevailing party in any action under this section.

87 Acts, ch 181, §15 HF 520
NEW section

557B.12 Nondisturbance provisions.

1. With respect to any property in this state acquired and put into operation by a membership camping operator after July 1, 1987, the membership camping operator shall not offer or execute a membership camping contract in this state granting the right to use the property until the following requirements are met:

a. Each person holding an interest in a voluntary blanket encumbrance has executed and delivered a nondisturbance agreement which includes all of the following provisions:

(1) That the rights of the holder or holders of the blanket encumbrance in the affected campground are subordinate to the rights of purchasers.

(2) That any person who acquires the affected campground or any portion of the campground by the exercise of any right of sale or foreclosure contained in the blanket encumbrance takes the campground subject to the rights of purchasers.

(3) That the holder or holders of the blanket encumbrance shall not use or cause the campground to be used in a manner which interferes with the right of purchasers to use the campground and its facilities in accordance with the terms and conditions of the membership camping contract.

b. Each hypothecation lender which has a lien on, or security interest in, the membership camping operator's ownership interest in the campground has executed and delivered a nondisturbance agreement and recorded the agreement in the office of the clerk of the district court of the county in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender has executed, delivered, and recorded an instrument stating that such person will give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this section:

(1) "*Hypothecation lender*" means a financial institution which provides a major hypothecation loan to a membership camping operator.

(2) "*Major hypothecation loan*" is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts.

(3) "*Nondisturbance agreement*" means an instrument by which a hypothecation lender agrees to conditions substantially the same as those set forth in paragraph "a".

2. In lieu of compliance with subsection 1, a surety bond or letter of credit satisfying the requirements of this subsection may be delivered to and accepted by the attorney general. The surety bond or letter of credit shall be issued to the attorney general for the benefit of purchasers and shall be in an amount which is not less than one hundred five percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the campground. The bond shall be issued by a surety which is authorized to do business in this state and which has sufficient net worth to satisfy the indebtedness. The aggregate liability of the surety for all damages shall not exceed the amount of the bond. The letter of credit shall be irrevocable, shall be drawn upon a bank, savings and loan, or financial institution, and shall be in form and content acceptable to the attorney general. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance including costs, expenses, and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced. The bond or letter of credit may be reduced at the option of the membership camping operator periodically in proportion to the reductions of the amounts secured by the blanket encumbrance.

3. The nondisturbance agreement shall be recorded in the real estate records of the county in which the campground is located.

87 Acts, ch 181, §16 HF 520
NEW section

557B.13 Advertising plans—disclosures—unlawful acts.

1. Any advertisement, communication, or sales literature relating to membership camping contracts, including oral statements by a salesperson or any other person, shall not contain:

a. Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which the statements were made.

b. Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible.

c. Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

2. A person shall not by any means, as part of an advertising program, offer any item of value as an inducement to the recipient to visit a location, attend a sales presentation, or contact a sales agent, unless the person clearly and conspicuously discloses in writing in the offer in readily understandable language each of the following:

a. The name and street address of the owner of the real or personal property or the provider of the services which are the subject of such visit, sales presentation, or contact with a sales agent.

b. A general description of the business of the owner or provider identified and the purpose of any requested visit, sales presentation, or contact with a sales agent, including a general description of the facilities or proposed facilities or services which are the subject of the sales presentation.

c. A statement of the odds, in arabic numerals, of receiving each item offered.

d. All restrictions, qualifications, and other conditions that must be satisfied before the recipient is entitled to receive the item, including all of the following:

(1) Any deadline by which the recipient must visit the location, attend the sales presentation, or contact the sales agent in order to receive the item.

(2) The approximate duration of any visit and sales presentation.

(3) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive the item.

e. A statement that the owner or provider reserves the right to provide a rain check or a substitute or like item, if these rights are reserved.

f. A statement that a recipient who receives an offered item may request and will receive evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

g. All other rules, terms, and conditions of the offer, plan, or program.

3. A person making an offer subject to registration under sections 557B.2 and 557B.3, or the person's employee or agent, shall not offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

4. A person making an offer subject to registration under sections 557B.2 and 557B.3, or the person's employee or agent, shall not fail to provide any offered item which a recipient is entitled to receive, unless the failure to provide the item is due to a higher than reasonably anticipated response to the offer which caused the item to be unavailable and the offer discloses the reservation of a right to provide a rain check or a like or substitute item if the offered item is unavailable.

5. If the person making an offer subject to registration under sections 557B.2 and 557B.3 is unable to provide an offered item because of limitations of supply not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered or receive a like or substitute item of equal or greater value at no additional cost or obligation to the recipient.

6. If a rain check is provided, the person making an offer subject to registration under sections 557B.2 and 557B.3, within a reasonable time, and in any event not later than ninety calendar days after the rain check is issued, shall deliver the agreed item to the recipient's address without additional cost or obligation to the recipient, unless the item for which the rain check is provided remains unavailable because of limitations of supply not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for these reasons, the person, not later than thirty days after the expiration of the ninety-day period, shall deliver a like or substitute item of equal or greater retail value to the recipient.

7. On the request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to registration under sections 557B.2 and 557B.3 shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

8. A person making an offer subject to registration under sections 557B.2 and 557B.3, or the person's employee or agent, shall not do any of the following:

- a. Misrepresent the size, quantity, identity, or quality of any prize, gift, money, or other item of value offered.
- b. Misrepresent in any manner the odds of receiving a particular gift, prize, amount of money, or other item of value.
- c. Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular prize, gift, money, or other item of value, unless this fact is true.
- d. Label any offer a notice of termination or notice of cancellation.
- e. Misrepresent, in any manner, the offer, plan, or program.

87 Acts, ch 181, §17 HF 520
NEW section

557B.14 Remedies.

1. A violation of this chapter or the commission of any act declared to be unlawful under this chapter constitutes a violation of section 714.16, subsection 2, paragraph "a", and the attorney general has all the powers enumerated in that section to enforce the provisions of this chapter.

2. In addition, the attorney general may seek civil penalties of not more than ten thousand dollars for each violation of or the commission of any act declared to be unlawful under this chapter. Each day of continued violation constitutes a separate offense.

3. Any person who fails to pay the filing fees required by this chapter and continues to sell membership camping contracts is liable civilly in an action brought by the attorney general for a penalty in an amount equal to treble the unpaid fees.

4. The provisions of this chapter are cumulative and nonexclusive and do not affect any other available remedy at law or equity, except as otherwise provided in sections 502.202, 503.3, and 537.3310.

87 Acts, ch 181, §18 HF 520
NEW section

557B.15 Exemptions by attorney general.

The attorney general may, by rule or order, exempt any person from all or part of the requirements of this chapter if the attorney general finds the requirements unnecessary for the protection of purchasers. In determining exemptions from this chapter, the attorney general shall consider all of the following:

1. The duration of the membership camping contracts involved.
2. The number of membership camping contracts being offered by the operator.
3. The amount of the purchase price of the membership camping contracts.

87 Acts, ch 181, §19 HF 520
NEW section

557B.16 Rules.

The attorney general may prescribe rules in accordance with this chapter as deemed necessary to carry out the provisions of this chapter.

87 Acts, ch 181, §20 HF 520
NEW section

CHAPTER 558

CONVEYANCES

558.39 Forms of acknowledgment—foreign acknowledgments.

The following forms of acknowledgment shall be sufficient in the cases to which they are respectively applicable. In each case where one of these forms is used, the name of the state and county where the acknowledgment is taken shall precede the body of the certificate, and the signature and official title of the officer shall follow it as indicated in the first form and shall constitute a part of the certificate, and the seal of the officer shall be attached when necessary under the provision of this chapter. No certificate of acknowledgment shall be held to be defective on account of the failure to show the official title of the officer making the certificate if such title appears either in the body of such certificate or in connection therewith, or with the signature thereto.

1. In the case of natural persons acting in their own right:

State of

County of ss.

On this day of, A.D. 19..... before me,
(Insert title of acknowledging officer), personally appeared, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that executed the same as voluntary act and deed.

.....
Notary Public in the state of Iowa.

2. In the case of natural persons acting by attorney:

On this day of, A.D. 19....., before me,
(Insert title of acknowledging officer), personally appeared, to me known to be the person who executed the foregoing instrument in behalf of, and acknowledged that that person executed the same as the voluntary act and deed of said

3. In the case of corporations or joint-stock associations:

On this day of, A.D. 19....., before me, a
(Insert title of acknowledging officer) in and for said county, personally appeared, to me personally known, who being by me duly (sworn or affirmed) did say that that person is (Insert title of executing officer) of said (corporation or association), that (the seal affixed to said instrument is the seal of said or no seal has been procured by the said) (corporation or association) and that said instrument was signed and sealed on behalf of the said (corporation or association) by authority of its board of (directors or trustees) and the said acknowledged the execution of said instrument to be the voluntary act and deed of said (corporation or association) by it voluntarily executed.

4. In the case of partnerships:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared, to me personally known, who being by me duly sworn, did say that the person is one of the partners of, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner

acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

5. In the case of an individual fiduciary:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.

6. In the case of a corporate fiduciary:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared and, to me personally known, who, being by me duly sworn, did say that they are the and, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that the instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; that and acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and of the fiduciary, by it, by them and as the fiduciary voluntarily executed.

7. In the case of a limited partnership with corporate general partner:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared, to me personally known, who being by me duly sworn did say that the person is the of, the General Partner of, a limited partnership, executing the foregoing instrument, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation as General Partner of, a limited partnership, by authority of the corporation's Board of Directors; and that as that officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and limited partnership by it and by the officer voluntarily executed.

8. In the case of a limited partnership with an individual general partner:

On this day of, 19....., before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared, to me personally known, who, being by me duly sworn, did say that the person is (a) (the) General Partner of, an Iowa limited partnership, executing the foregoing instrument, that the instrument was signed on behalf of the limited partnership by authority of the limited partnership; and the general partner acknowledged the execution of the instrument to be the voluntary act and deed of the limited partnership, by it and by the general partner voluntarily executed.

9. In the case of joint ventures:

On this day of, 19....., before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared and, to me personally known, who, being by me duly sworn, did say that they are the and, respectively, of an Iowa corporation, a joint venturer of, a joint venture, executing the foregoing instrument, that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that the instrument was signed (and sealed) on behalf of the corporation as a joint venturer of, a joint venture, by authority of its Board of Directors; and that and, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation and joint venture, by the corporation and joint venture and by them voluntarily executed.

10. In the case of municipalities:

On this day of, 19....., before me,, a Notary Public in and for the State of Iowa, personally appeared and, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. passed (the Resolution adopted) by the City Council, under Roll Call No. of the City Council on the day of, 19....., and that and acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

11. In the case of counties:

On this day of, 19....., before me,, a Notary Public in and for the State of Iowa, personally appeared and, to me personally known, and who, being by me duly sworn, did say that they are the Chairperson of the Board of Supervisors and County Auditor, respectively, of the County of, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its Board of Supervisors, as contained in Ordinance No. passed (the Resolution adopted) by the Board of Supervisors, under Roll Call No. of the Board of Supervisors on the day of, 19....., and and acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

12. In the case of natural persons acting as custodian pursuant to chapter 565B or any other Uniform Transfers to Minors Act:

On this day of, 19....., before me, the undersigned, a Notary Public in and for said State, personally appeared, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that the custodian executed the instrument as custodian for (name of minor), under the (State) Uniform Transfers to Minors Act, as the voluntary act and deed of the person and of the custodian.

13. In the case of corporations or national banking associations acting as custodians pursuant to chapter 565B or any other Uniform Transfers to Minors Act:

On this day of, 19....., before me, the undersigned, a Notary Public in and for said State, personally appeared and, to me personally known, who, by me duly sworn, did say that they are the and, respectively, of the Corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that the instrument was signed (and sealed) on behalf of the Corporation by authority of its Board of Directors; that and acknowledged the execution of the instrument as custodian of (name of minor), under the (State) Uniform Transfers to Minors Act, to be the voluntary act and deed of the person and of the custodian.

(In all cases add signature and title of the officer taking the acknowledgment, and strike from between the parentheses the word or clause not used, as the case may be.)

Any instrument affecting real estate situated in this state which has been or may be acknowledged or proved in a foreign state or country and in conformity

with the laws of that foreign state or country, shall be deemed as good and valid in law as though acknowledged or proved in conformity with the existing laws of this state.

87 Acts, ch 2, §1 HF 129
NEW subsections 12 and 13

558.69 Existence and location of wells, disposal sites, underground storage tanks, and hazardous waste.

With each declaration of value submitted to the county recorder under chapter 428A, there shall also be submitted a statement that no known wells are situated on the property, or if known wells are situated on the property, the statement must state the approximate location of each known well and its status with respect to section 159.29 or 455B.190. The statement shall also state that no disposal site for solid waste, as defined in section 455B.301, which has been deemed to be potentially hazardous by the department of natural resources, exists on the property, or if such a disposal site does exist, the location of the site on the property. The statement shall additionally state that no underground storage tank, as defined in section 455B.471, subsection 6, exists on the property, or if an underground storage tank does exist, the type and size of the tank, and the substance in the tank. The statement shall also state that no hazardous waste as defined in section 455B.411, subsection 4, or listed by the department pursuant to section 455B.412, subsection 2, or section 455B.464, exists on the property, or if hazardous waste does exist, that the waste is being managed in accordance with rules adopted by the department of natural resources. The statement shall be signed by the grantors or the transferors of the property. The county recorder shall refuse to record any deed, instrument, or writing for which a declaration of value is required under chapter 428A unless the statement required by this section has been submitted to the county recorder.

If a declaration of value is not required, the above information shall be submitted on a separate form. The director of the department of natural resources shall prescribe the form of the statement and the separate form to be supplied by each county recorder in the state. The county recorder shall transmit the statements to the department of natural resources at times directed by the director of the department.

87 Acts, ch 225, §307 HF 631
NEW section

CHAPTER 561

HOMESTEAD

561.4 Selecting—plattting.

The owner, husband or wife, or a single person, may select the homestead and cause it to be platted, but a failure to do so shall not render the same liable when it otherwise would not be, and a selection by the owner shall control. When selected, it shall be designated by a legal description, or if impossible it shall be marked off by permanent, visible monuments, and the description shall give the direction and distance of the starting point from some corner of the dwelling, which description, with the plat, shall be filed and recorded by the recorder of the proper county in the homestead book, which shall be, as nearly as may be, in the form of the record books for deeds, with an index kept in the same manner.

87 Acts, ch 116, §1 SF 179
Section amended

561.5 Platted by officer having execution.

Should the homestead not be platted and recorded at the time levy is made upon real property in which a homestead is included, the officer having the execution

shall give notice in writing to the owner or owners if found within the county, to plat and record the same within ten days after service; after which time the officer shall cause the homestead to be platted and recorded, and the expense shall be added to the costs in the case.

87 Acts, ch 116, §2 SF 179
Section amended

561.16 Exemption.

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale. For purposes of this section, "household unit" means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

87 Acts, ch 116, §3 SF 179
Section amended

561.22 Waiver.

If a homestead exemption waiver is contained in a written contract affecting agricultural land as defined in section 172C.1, or dwellings, buildings, or other appurtenances located on the land, the contract must contain a statement in substantially the following form, in boldface type of a minimum size of ten points, and be signed and dated by the person waiving the exemption at the time of the execution of the contract: **"I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract."**

87 Acts, ch 67, §1 SF 474

1987 amendment effective May 9, 1987, and retroactive to May 29, 1986. A written contract affecting land that is not agricultural land as defined in section 172C.1, may be enforced as any other contract, notwithstanding that the contract was executed prior to May 9, 1987, and notwithstanding that the contract does not contain the statement referred to in §561.22 explaining the consequences of waiving a homestead exemption or that the statement is not signed by the person waiving the exemption; 87 Acts, ch 67, §2 SF 474

Section amended

CHAPTER 565B

TRANSFERS TO MINORS

565B.1 Definitions.

In this chapter, unless the context otherwise requires:

1. **"Adult"** means an individual who has attained the age of twenty-one years.
2. **"Benefit plan"** means an employer's plan for the benefit of an employee or partner or an individual retirement account.
3. **"Broker"** means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
4. **"Conservator"** means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
5. **"Court"** means the supreme court, court of appeals, district courts, and other courts the general assembly establishes.
6. **"Custodial property"** means both of the following:
 - a. Any interest in property transferred to a custodian under this chapter.
 - b. The income from and proceeds of that interest in property.
7. **"Custodian"** means a person so designated under section 565B.9 or a successor or substitute custodian designated under section 565B.18.

8. "*Financial institution*" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

9. "*Legal representative*" means an individual's personal representative or conservator.

10. "*Member of the minor's family*" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

11. "*Minor*" means an individual who has not attained the age of twenty-one years.

12. "*Personal representative*" means an executor, administrator, successor personal representative, special administrator, or temporary administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

13. "*State*" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

14. "*Transfer*" means a transaction that creates custodial property under section 565B.9.

15. "*Transferor*" means a person who makes a transfer under this chapter.

16. "*Trust company*" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

87 Acts, ch 87, §1 HF 131
Subsection 2 amended

565B.7 Transfer by obligor.

1. Subject to subsections 2 and 3, a person not subject to section 565B.5 or 565B.6 who holds property of, or owes a liquidated debt to, a minor not having a conservator, may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 565B.9.

2. If a person having the right to do so under section 565B.3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

3. If no custodian has been nominated under section 565B.3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

4. A person making a distribution under this section is relieved of all accountability with respect to the property once the property has been distributed.

5. This section does not apply to any amounts due a minor for services rendered by the minor.

87 Acts, ch 87, §2 HF 131
NEW subsection 5

CHAPTER 572

MECHANIC'S LIEN

572.9 Time of filing.

The statement or account required by section 572.8 shall be filed by a principal contractor or subcontractor within ninety days from the date on which the last of the material was furnished or the last of the labor was performed. A failure to file

the statement or account within the ninety-day period does not defeat the lien, except as otherwise provided in this chapter.

87 Acts, ch 79, §1 SF 423
Section amended

572.10 Perfecting subcontractor's lien after lapse of ninety days.

After the lapse of the ninety days prescribed in section 572.9, a subcontractor may perfect a mechanic's lien by filing a claim with the clerk of the district court and giving written notice thereof to the owner, the owner's agent, or trustee. Such notice may be served by any person in the manner original notices are required to be served. If the party to be served, the party's agent, or trustee, is out of the county wherein the property is situated, a return of that fact by the person charged with making such service shall constitute sufficient service from and after the time it was filed with the clerk of the district court.

87 Acts, ch 79, §2 SF 423
Section amended

572.11 Extent of lien filed after ninety days.

Liens perfected under section 572.10 shall be enforced against the property or upon the bond, if given, by the owner, as hereinafter provided, only to the extent of the balance due from the owner to the contractor at the time of the service of such notice; but if the bond was given by the contractor, or person contracting with the subcontractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount found due the subcontractor.

87 Acts, ch 79, §3 SF 423
Section amended

572.12 Time of filing against railway.

Where a lien is claimed upon a railway, the subcontractor shall have ninety days from the last day of the month in which such labor was done or material furnished within which to file the claim therefor.

87 Acts, ch 79, §4 SF 423
Section amended

572.13 Liability of owner to original contractor.

1. An owner of a building, land, or improvement upon which a mechanic's lien of a subcontractor may be filed, is not required to pay the original contractor for compensation for work done or material furnished for the building, land, or improvement until the expiration of ninety days from the completion of the building or improvement unless the original contractor furnishes to the owner one of the following:

a. Receipts and waivers of claims for mechanics' liens, signed by all persons who furnished material or performed labor for the building, land, or improvement.

b. A good and sufficient bond to be approved by the owner, conditioned that the owner shall be held harmless from any loss which the owner may sustain by reason of the filing of mechanics' liens by subcontractors.

2. An original contractor who enters into a contract for an owner-occupied dwelling and who has contracted or will contract with a subcontractor to provide labor or furnish material for the dwelling shall include the following notice in any written contract with the owner and shall provide the owner with a copy of the written contract:

"Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner."

If no written contract is entered into between the original contractor and the dwelling owner, the original contractor shall, within ten days of commencement of

work on the dwelling, provide written notice to the dwelling owner stating the name and address of all subcontractors that the contractor intends to use for the construction and, that the subcontractors or suppliers may have lien rights in the event they are not paid for their labor or material used on this site; and the notice shall be updated as additional subcontractors and suppliers are used from the names disclosed on earlier notices.

An original contractor who fails to provide notice under this section is not entitled to the lien and remedy provided by this chapter as they pertain to any labor performed or material furnished by a subcontractor not included in the notice.

87 Acts, ch 79, §5 SF 423
Section amended

572.14 Liability to subcontractor after payment to original contractor.

1. Except as provided in subsection 2, payment to the original contractor by the owner of any part or all of the contract price of the building or improvement before the lapse of the ninety days allowed by law for the filing of a mechanic's lien by a subcontractor, does not relieve the owner from liability to the subcontractor for the full value of any material furnished or labor performed upon the building, land, or improvement if the subcontractor files a lien within the time provided by law for its filing.

2. In the case of an owner-occupied dwelling, a mechanic's lien perfected under this chapter is enforceable only to the extent of the balance due from the owner to the principal contractor at the time written notice, in the form specified in subsection 3, is served on the owner. This notice may be served by delivering it to the owner or the owner's spouse personally, or by mailing it to the owner by certified mail with restricted delivery and return receipt to the person mailing the notice, or by personal service as provided in the rules of civil procedure.

3. The written notice required for purposes of subsection 2 shall contain the name of the owner, the address of the property charged with the lien, the name, address and telephone number of the lien claimant, and the following statement:

"The person named in this notice is providing labor or materials or both in connection with improvements to your residence or real property. Chapter 572 of the Code of Iowa may permit the enforcement of a lien against this property to secure payment for labor and materials supplied. You are not required to pay more to the person claiming the lien than the amount of money due from you to the person with whom you contracted to perform the improvements. You should not make further payments to your contractor until the contractor presents you with a waiver of the lien claimed by the person named in this notice. If you have any questions regarding this notice you should call the person named in this notice at the phone number listed in this notice or contact an attorney. You should obtain answers to your questions before you make any payments to the contractor."

87 Acts, ch 79, §6 SF 423
Subsection 1 amended

572.16 Rule of construction.

Nothing in this chapter shall be construed to require the owner to pay a greater amount or at an earlier date than is provided in the owner's contract with the principal contractor, unless said owner pays a part or all of the contract price to the original contractor before the expiration of the ninety days allowed by law for the filing of a mechanic's lien by a subcontractor; provided that in the case of an owner-occupied dwelling, nothing in this chapter shall be construed to require the owner to pay a greater amount or at an earlier date than is provided in the owner's contract with the principal contractor, unless the owner pays a part or all

of the contract price to the principal contractor after receipt of notice under section 572.14, subsection 2.

87 Acts, ch 79, §7 SF 423
Section amended

572.27 Limitation on action.

An action to enforce a mechanic's lien may be brought within two years from the expiration of the ninety days for filing the claim as provided in this chapter and not afterwards.

87 Acts, ch 79, §8 SF 423
Section amended

572.30 Action by subcontractor or owner against contractor.

Unless otherwise agreed, a principal contractor who engages a subcontractor to supply labor or materials or both for improvements, alterations or repairs to a specific owner-occupied dwelling shall pay the subcontractor in full for all labor and materials supplied within thirty days after the date the principal contractor receives full payment from the owner. If a principal contractor fails without due cause to pay a subcontractor as required by this section, the subcontractor, or the owner by subrogation, may commence an action against the contractor to recover the amount due. Prior to commencing an action to recover the amount due, a subcontractor, or the owner by subrogation, shall give notice of nonpayment of the cost of labor or materials to the principal contractor paid for the improvement. Notice of nonpayment must be in writing, delivered in a reasonable manner, and in terms that reasonably identify the real estate improved and the nonpayment complained of. In an action to recover the amount due a subcontractor, or the owner by subrogation, under this section, the court in addition to actual damages, shall award a successful plaintiff exemplary damages against the contractor in an amount not less than one percent and not exceeding fifteen percent of the amount due the subcontractor, or the owner by subrogation, for the labor and materials supplied, unless the principal contractor does one or both of the following, in which case no exemplary damages shall be awarded:

1. Establishes that all proceeds received from the person making the payment have been applied to the cost of labor or material furnished for the improvement.
2. Within fifteen days after receiving notice of nonpayment the principal contractor gives a bond or makes a deposit with the clerk of the district court, in an amount not less than the amount necessary to satisfy the nonpayment for which notice has been given under this section, and in a form approved by a judge of the district court, to hold harmless the owner or person having the improvement made from any claim for payment of anyone furnishing labor or material for the improvement, other than the principal contractor.

87 Acts, ch 79, §9 SF 423
Section amended

CHAPTER 573

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

573.12 Payments and retention from payments on contracts.

1. *Retention.* Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment five percent of that amount which is determined to be due according to the estimate of the architect or engineer.

The contractor may retain from each payment to a subcontractor not more than the lesser of five percent or the amount specified in the contract between the contractor and the subcontractor.

2. *Prompt payment.* A progress payment or final payment to a subcontractor for satisfactory performance of the subcontractor's work shall be made no later than:

a. Seven days after the contractor receives payment for that subcontractor's work.

b. A reasonable time after the contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.

A contractor's acceptance of payment for one subcontractor's work is not a waiver of claims, and does not prejudice the rights of the contractor, as to any other claim related to the contract or project.

3. *Interest payments.* If the contractor receives an interest payment under section 573.14, the contractor shall pay the subcontractor a share of the interest payment proportional to the payment for that subcontractor's work.

87 Acts, ch 155, §1 HF 244
Section amended

CHAPTER 595

MARRIAGE

595.10 Who may solemnize.

Marriages may be solemnized by:

1. A judge of the supreme court, court of appeals, or district court, including a district associate judge, or a judicial magistrate, and including a senior judge as defined in section 602.9202, subsection 1.

2. A person ordained or designated as a leader of the person's religious faith.

87 Acts, ch 115, §69 SF 374
Subsection 1 amended

CHAPTER 598

DISSOLUTION OF MARRIAGE

598.13 Financial statements filed.

Both parties shall disclose their financial status. A showing of special circumstances shall not be required before the disclosure is ordered. A statement of net worth set forth by affidavit on a form prescribed by the supreme court and furnished without charge by the clerk of the district court shall be filed by each party prior to the dissolution hearing. However, the parties may waive this requirement upon application of both parties and approval by the court.

Failure to comply with the requirements of this section constitutes failure to make discovery as provided in rule of civil procedure 134.

87 Acts, ch 89, §1 HF 408
Unnumbered paragraph 1 amended

598.35 Grandparent visitation rights.

The grandparent of a child may petition the district court for grandchild visitation rights when any of the following circumstances occur:

1. The parents of the child are divorced.
2. A petition for dissolution of marriage has been filed by one of the parents of the child.
3. The parent of the child, who is the child of the grandparent, has died.

4. The child has been placed in a foster home.

5. The parents of the child are divorced, and the parent who is not the child of the grandparent has legal custody of the child, and the spouse of the child's custodial parent has been issued a final adoption decree pursuant to section 600.13.

6. The paternity of a child born out of wedlock is judicially established and the grandparent of the child is the parent of the father of the child and the mother of the child has custody of the child, or the grandparent of a child born out of wedlock is the parent of the mother of the child and custody has been awarded to the father of the child.

A petition for grandchild visitation rights shall be granted only upon a finding that the visitation is in the best interests of the child and that the grandparent had established a substantial relationship with the child prior to the filing of the petition.

87 Acts, ch 159, §9 HF 567
Section amended

CHAPTER 600

ADOPTION

600.8 Placement investigations and reports.

1. *a.* A preplacement investigation shall be directed to and a report of this investigation shall answer the following:

(1) Whether the home of the prospective adoption petitioner is a suitable one for the placement of a minor person to be adopted.

(2) How the prospective adoption petitioner's emotional maturity, finances, health, relationships, and any other relevant factor may affect the petitioner's ability to accept, care, and provide a minor person to be adopted with an adequate environment as that person matures.

(3) Whether the prospective adoption petitioner has been convicted of a violation under a law of any state of a crime or has a record of founded child abuse.

b. A postplacement investigation and a report of this investigation shall:

(1) Verify the allegations of the adoption petition and its attachments and of the report of expenditures required under section 600.9.

(2) Evaluate the progress of the placement of the minor person to be adopted.

(3) Determine whether adoption by the adoption petitioner may be in the best interests of the minor person to be adopted.

c. A background information investigation and a report of this investigation shall not disclose the identity of the natural parents of the minor person to be adopted and shall answer the following:

(1) What is the complete family medical history of the person to be adopted, including any known genetic, metabolic, or familial disorders?

(2) What is the complete medical and developmental history of the person to be adopted?

2. *a.* A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any agency or independent placement of a minor person in the petitioner's home in anticipation of an ensuing adoption. A report of a preplacement investigation that has approved a prospective adoption petitioner for a placement shall not authorize placement of a minor person with that petitioner after one year from the date of the report's issuance. However, if the prospective adoption petitioner is a relative within the fourth degree of consanguinity who has assumed custody of a minor person to be adopted, a

preplacement investigation of this petitioner and a report of the investigation may be completed at a time established by the court or may be waived as provided in subsection 12.

b. The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3) unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

c. If the person making the investigation does not approve a prospective adoption petitioner under paragraph "a" of this subsection, the person investigated may appeal the disapproval as a contested case to the commissioner of human services. Judicial review of any adverse decision by the commissioner may be sought pursuant to chapter 17A.

3. The department, an agency or an investigator shall conduct all investigations and reports required under subsection 2 of this section.

4. A postplacement investigation and a background information investigation and the reports of these investigations shall be completed and the reports filed with the court prior to the holding of the adoption hearing prescribed in section 600.12. Upon the filing of an adoption petition pursuant to section 600.5, the court shall immediately appoint the department, an agency, or an investigator to conduct and complete the postplacement and background information investigations and reports. In addition to filing the background information report with the court prior to the holding of the adoption hearing, the department, agency, or investigator appointed to conduct the background information investigation shall complete the background information investigation and report and furnish a copy to the adoption petitioner within thirty days after the filing of the adoption petition. Any person, including a juvenile court, who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully co-operate with the conducting of the background information investigation and report by disclosing any relevant background information, whether contained in sealed records or not.

5. Any person conducting an investigation under subsections 3 and 4 may, in the investigation or subsequent report, include, utilize, or rely upon any reports, studies, or examinations to the extent they are relevant.

6. Any person conducting an investigation under subsections 3 and 4 may charge a fee which does not exceed the reasonable cost of the services rendered and which is based on a sliding scale schedule relating to the investigated person's ability to pay.

7. Any investigation or report required under this section shall not apply when the person to be adopted is an adult or when the prospective adoption petitioner or adoption petitioner is a stepparent of the person to be adopted. However, in the case of a stepparent adoption, the court, upon the request of an interested person or on its own motion stating the reasons therefor of record, may order an investigation or report pursuant to this section.

8. Any person designated to make an investigation and report under this section may request an agency or state agency, within or outside this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the court. In the case of the adoption of a minor person by a person domiciled or residing in any other jurisdiction of the United States, any investigation or report required under this section which has been conducted pursuant to the standards of that other jurisdiction shall be recognized in this state.

9. The department may investigate, on its own initiative or on order of the court, any placement made or adoption petition filed under this chapter or chapter 600A and may report its resulting recommendation to the court.

10. The department or an agency or investigator may conduct any investigations required for an interstate or interagency placement. Any interstate investigations or placements shall follow the procedures and regulations under the interstate compact on the placement of children. Such investigations and placements shall be in compliance with the laws of the states involved.

11. Any person who assists in or impedes the placement or adoption of a minor person in violation of the provisions of this section shall be, upon conviction, guilty of a simple misdemeanor.

12. Any investigation and report required under subsection 1 of this section may be waived by the court if the adoption petitioner is related within the fourth degree of consanguinity to the person to be adopted.

87 Acts, ch 153, §18, 19 HF 412

Subsection 1, paragraph a, NEW subparagraph (3)

Subsection 2, NEW paragraph b and former paragraph b relettered as c

600.15 Foreign and international adoptions.

1. *a.* A decree establishing a parent-child relationship by adoption which is issued pursuant to due process of law by a court of any other jurisdiction in the United States shall be recognized in this state.

b. A decree terminating a parent-child relationship which is issued pursuant to due process of law by a court of any other jurisdiction in the United States shall be recognized in this state.

c. A document approved by the immigration and naturalization service of the United States department of justice shall be accepted by the department of human services as evidence of termination of parental rights in a jurisdiction outside the United States and recognized in this state.

2. If an adoption has occurred in the minor person's country of origin, a further adoption must occur in the state where the adopting parents reside in accordance with the adoption laws of that state.

3. The department may provide necessary assistance to an eligible citizen of Iowa who desires to, in accordance with the immigration laws of the United States, make an international adoption. For any such assistance the department may charge a fee which does not exceed the reasonable cost of services rendered and which is based on a sliding scale relating to the investigated person's ability to pay.

4. Any rules of the department relating to placement of a minor child for adoption which are more restrictive than comparable rules of agencies making international placements and laws of the United States shall not be enforced by the department in an international adoption.

87 Acts, ch 140, §1-3 HF 505

1987 amendment to subsection 2 applies to adoptions finalized on or after July 1, 1987; 87 Acts, ch 140, §4 HF 505

Subsection 1, paragraphs a and c amended

Subsection 2 amended

600.22 Rules.

The department of human services shall adopt rules in accordance with the provisions of chapter 17A, which are necessary for the administration of sections 600.17 to 600.21 and 600.23.

87 Acts, ch 102, §1 HF 490

Section amended

600.23 Adoption assistance compact.

1. *Purpose.* The department of human services may enter into interstate agreements with state agencies of other states for the protection of children on behalf of whom adoption subsidy is being provided by the department of human

services and to provide procedures for interstate children's adoption assistance payments, including medical payments.

2. *Compact authorization and definitions.*

a. The Iowa department of human services may enter into interstate agreements with state agencies of other states for the provision of medical services to adoptive families who participate in the subsidized adoption or adoption assistance program.

b. The Iowa department of human services may develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in this section. When so entered into, and for so long as it shall remain in force, such a compact shall have the force and effect of law.

c. For the purposes of this section, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

d. For the purposes of this section, the term "adoption assistance or subsidized adoption state" means the state that is signatory to an adoption assistance agreement in a particular case.

e. For the purposes of this section, the term "residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

3. *Compact contents.* A compact entered into pursuant to the authority conferred by this section shall have the following content:

a. A provision making it available for joinder by all states.

b. A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.

c. A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

d. A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which undertakes to provide the adoption assistance, and that any such agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.

e. Such other provisions as may be appropriate to implement the proper administration of the compact.

4. *Medical assistance.*

a. A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance card from this state upon the filing of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Iowa department of human services, the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

b. The Iowa department of human services shall consider the holder of a medical assistance card pursuant to this section as any other holder of a medical assistance card under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

c. The Iowa department of human services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption subsidy agreement made prior to July 1, 1987 by the Iowa department of human services

for the coverage or benefits, if any, not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed for such expense. However, reimbursement shall not be made for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The additional coverages and benefit amounts provided pursuant to this subsection shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Such regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

d. A person who submits a claim for payment or reimbursement for services or benefits pursuant to this subsection or makes any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading, or fraudulent is guilty of an aggravated misdemeanor.

e. This subsection applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption subsidy agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive medical assistance in accordance with the laws and procedures applicable to medical assistance.

87 Acts, ch 102, §2 HF 490
NEW section

CHAPTER 600A

TERMINATION OF PARENTAL RIGHTS

600A.10 Grandparent visitation rights. Repealed by 87 Acts, ch 159, §10. HF 567 See §598.35.

CHAPTER 601A

CIVIL RIGHTS COMMISSION

601A.6 Unfair employment practices.

1. It shall be an unfair or discriminatory practice for any:

a. Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, national origin, religion or disability of such applicant or employee, unless based upon the nature of the occupation. If a disabled person is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

b. Labor organization or the employees, agents or members thereof to refuse to admit to membership any applicant, to expel any member, or to otherwise discriminate against any applicant for membership or any member in the privileges, rights, or benefits of such membership because of the age, race, creed, color, sex, national origin, religion or disability of such applicant or member.

c. Employer, employment agency, labor organization, or the employees, agents, or members thereof to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex,

national origin, religion or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation. If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

An employer, employment agency, or their employees, servants or agents may offer employment or advertise for employment to only the disabled, when other applicants have available to them, other employment compatible with their ability which would not be available to the disabled because of their handicap. Any such employment or offer of employment shall not discriminate among the disabled on the basis of race, color, creed, sex or national origin.

2. Employment policies relating to pregnancy and childbirth shall be governed by the following:

a. A written or unwritten employment policy or practice which excludes from employment applicants or employees because of the employee's pregnancy is a prima facie violation of this chapter.

b. Disabilities caused or contributed to by the employee's pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to the employee's pregnancy or giving birth, on the same terms and conditions as they are applied to other temporary disabilities.

c. Disabilities caused or contributed to by legal abortion and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any temporary disability or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to legal abortion on the same terms and conditions as they are applied to other temporary disabilities. The employer may elect to exclude health insurance coverage for abortion from a plan provided by the employer, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

d. An employer shall not terminate the employment of a person disabled by pregnancy because of the employee's pregnancy.

e. Where a leave is not available or a sufficient leave is not available under any health or temporary disability insurance or sick leave plan available in connection with employment, the employer of the pregnant employee shall not refuse to grant to the employee who is disabled by the pregnancy a leave of absence if the leave of absence is for the period that the employee is disabled because of the employee's pregnancy, childbirth, or related medical conditions, or for eight weeks, whichever is less. However, the employee must provide timely notice of the period of leave requested and the employer must approve any change in the period requested before the change is effective. Before granting the leave of absence, the employer may require that the employee's disability resulting from pregnancy be verified by medical certification stating that the employee is not able to reasonably perform the duties of employment.

3. This section shall not prohibit discrimination on the basis of age if the person subject to the discrimination is under the age of eighteen years, unless that person is considered by law to be an adult.

4. Notwithstanding the provisions of this section, a state or federal program designed to benefit a specific age classification which serves a bona fide public purpose shall be permissible.

5. This section shall not apply to age discrimination in bona fide apprenticeship employment programs if the employee is over forty-five years of age.

6. This section shall not apply to:

a. Any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

b. The employment of individuals for work within the home of the employer if the employer or members of the employer's family reside therein during such employment.

c. The employment of individuals to render personal service to the person of the employer or members of the employer's family.

d. Any bona fide religious institution or its educational facility, association, corporation or society with respect to any qualifications for employment based on religion when such qualifications are related to a bona fide religious purpose. A religious qualification for instructional personnel or an administrative officer, serving in a supervisory capacity of a bona fide religious educational facility or religious institution, shall be presumed to be a bona fide occupational qualification.

87 Acts, ch 201, §1 HF 580

NEW subsection 2 and former subsections 2-5 renumbered 3-6

CHAPTER 601E

DISTRESS FLAGS AND IDENTIFICATION DEVICES FOR HANDICAPPED

601E.6 Handicapped identification devices.

1. A handicapped identification device may be displayed in a motor vehicle being used by a handicapped person, either as operator or passenger. The devices shall be of uniform design and fabricated of durable material, suitable for display from within the passenger compartment of a motor vehicle, and readily transferable from one vehicle to another. They shall be acquired by the department and sold at cost, not to exceed five dollars, to handicapped persons upon application on forms prescribed by the department. Before delivering a handicapped identification device to a purchaser, the department shall permanently affix to the device a unique number which may be used by the department to identify that individual purchaser.

A handicapped person who has been issued registration plates as a seriously disabled veteran under the provisions of section 321.105 may apply to the department for handicapped identification stickers to be affixed to the plates. The handicapped identification stickers shall bear the international symbol of accessibility. The handicapped identification stickers shall be acquired by the department and sold at cost, not to exceed five dollars, to eligible handicapped persons upon application on forms prescribed by the department.

A handicapped identification sticker affixed to a registration plate issued to a disabled veteran under section 321.166, subsection 6, and a handicapped registration plate issued under section 321.34, subsection 7, are also valid handicapped identification devices.

A handicapped identification device or sticker shall only be issued if the applicant files with the department a statement from a physician licensed under

chapter 148, 150, or 150A, written on the physician's stationery, stating the nature of the applicant's handicap and such additional information as required by rules adopted by the department under subsection 3. This paragraph does not apply to handicapped identification devices issued to nonhandicapped individuals, government agencies, or private organizations under subsection 3, paragraph "d".

2. A city or other political subdivision which provides on-street parking areas or off-street parking facilities shall set aside at least six-tenths of one percent of the metered parking spaces as handicapped parking spaces. A person may also set aside handicapped parking spaces on the person's property provided each parking space is clearly and prominently designated as a handicapped parking space. The use of a handicapped parking space, located on either public or private property, by a motor vehicle not displaying a handicapped identification device, or by a motor vehicle displaying such a device but not being used by a handicapped person, as operator or passenger is a misdemeanor for which a fine may be imposed upon the owner, operator, or lessee of the motor vehicle. The fine for each violation is fifteen dollars. Proof of conviction of three or more violations involving improper use of the same handicapped identification device is grounds for revocation by the department of the holder's privilege to use the device.

Notwithstanding chapter 805, violations of this subsection which are admitted shall be charged and collected upon a simple notice of fine and no costs or other charges shall be assessed. Violations which are denied shall be charged on the same simple notice of fine and proceed before the court the same as other traffic violations and court costs shall be assessed. A uniform citation and complaint signed by the charging officer may be used for the notice of fine.

3. The department shall promulgate rules:

a. Establishing procedure for applying to the department for issuance of a permanent or temporary handicapped identification device and handicapped identification stickers under this section.

b. Requiring persons who seek permanent handicapped identification devices or handicapped identification stickers to furnish evidence upon initial application that they are permanently handicapped; and requiring persons who seek temporary handicapped identification devices to furnish evidence upon initial application that they are physically handicapped and, in addition, to furnish evidence at three-month intervals that they remain physically handicapped.

c. Governing the manner in which handicapped identification devices and stickers are to be displayed in or on motor vehicles.

d. Establishing procedure and proof requirements for application to the department for issuance of a handicapped identification device to nonhandicapped individuals, government agencies, or private organizations which are engaged in providing transportation services for handicapped persons.

4. Handicapped identification devices issued by other states to their handicapped citizens shall be valid handicapped identification devices in this state.

87 Acts, ch 51, §1 SF 459
Subsection 2 amended

CHAPTER 601K

DEPARTMENT OF HUMAN RIGHTS

601K.1 Department of human rights.

A department of human rights is created, with the following divisions:

1. Division of Spanish-speaking people.
2. Division of children, youth, and families.
3. Division on the status of women.
4. Division of persons with disabilities.

5. Division of community action agencies.
6. Division of deaf services.
7. Division for the blind.

87 Acts, ch 115, §70 SF 374
Subsection 3 amended

601K.12 Commission of Spanish-speaking people—terms—compensation.

The commission of Spanish-speaking people consists of nine members, appointed by the governor from a list of nominees submitted by the governor's Spanish-speaking peoples task force. The members of the commission shall be appointed during the month of June and shall serve for terms of two years commencing July 1 of each odd-numbered year. Members appointed shall continue to serve until their respective successors are appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority and in the manner of the original appointments. Members shall receive actual expenses incurred while serving in their official capacity. Members may also be eligible to receive compensation as provided in section 7E.6.

87 Acts, ch 115, §71 SF 374
Section amended

601K.40 Repeal.

Sections 601K.31 through 601K.39, Code 1989, are repealed effective June 30, 1989.

87 Acts, ch 234, §114 HF 671
NEW section

601K.41 through 601K.50 Reserved.

SUBCHAPTER 4 DIVISION ON THE STATUS OF WOMEN

601K.51 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. "*Commission*" means the commission on the status of women.
2. "*Division*" means the division on the status of women of the department of human rights.
3. "*Administrator*" means the administrator of the division on the status of women of the department of human rights.

87 Acts, ch 115, §72 SF 374
Subsections 2 and 3 amended

601K.94 Community action agency board.

1. A recognized community action agency shall be governed by a board of directors composed of at least fifteen members but not more than thirty-three members. The board membership shall be as follows:

- a. One-third shall be persons who are currently on a city council or board of supervisors or designees of such persons.
- b. One-third shall be persons who according to federal guidelines have incomes at or below poverty level and are elected by such persons, or are representatives elected by such persons.
- c. One-third shall be persons who are members or representatives of businesses, industry, labor, religious, welfare, and educational organizations, or other major interest groups. The term of such person shall be not more than three years. Such person shall not serve more than two consecutive terms and shall be elected by a majority of the board members serving pursuant to paragraphs "a" and "b".

2. Notwithstanding subsection 1, a public agency shall establish an advisory board or may contract with a delegate agency to assist the governing board. The advisory board or delegate agency board shall be composed of the same type of

membership as a board of directors for community action agencies under subsection 1. However, the public agency acting as the community action agency shall determine annual program budget requests.

87 Acts, ch 115, §73 SF 374
Subsection 2 amended

601K.112 Commission created.

A commission on the deaf is established, consisting of seven members appointed by the governor, subject to confirmation by the senate. Lists of nominees for appointment to membership on the commission may be submitted by the Iowa association of the deaf, the Iowa state registry of interpreters for the deaf, the Iowa school for the deaf, and the commission of persons with disabilities. At least four members shall be persons who cannot hear human speech with or without use of amplification. All members shall reside in Iowa. The members of the commission shall appoint the chairperson of the commission. A majority of the members of the commission constitutes a quorum.

Terms of office are three years and shall begin and end pursuant to section 69.19. The commission shall adopt rules concerning programs and services for deaf persons.

Commission members shall be reimbursed for actual expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6.

87 Acts, ch 58, §1 HF 373; 87 Acts, ch 115, §74 SF 374
See Code editor's note to §135.11
Unnumbered paragraph 1 amended

601K.114 Duties of commission.

The commission shall:

1. Interpret to communities and to interested persons the needs of the deaf and how their needs may be met through the use of service providers.
2. Obtain without additional cost to the state available office space in public and private agencies which service providers may utilize in carrying out service projects for deaf persons.
3. Establish service projects for deaf persons throughout the state. Projects shall not be undertaken by service providers for compensation which would duplicate existing services when those services are available to deaf people through paid interpreters or other persons able to communicate with deaf people.

As used in this section, "*service projects*" includes interpretation services for persons who are deaf, referral and counseling services for deaf people in the areas of adult education, legal aid, employment, medical, finance, housing, recreation, and other personal assistance and social programs.

"*Service providers*" are persons who, for compensation or on a volunteer basis, carry out service projects.

4. Identify agencies, both public and private, which provide community services, evaluate the extent to which they make services available to deaf people, and cooperate with the agencies in coordinating and extending these services.
5. Collect information concerning deafness and provide for the dissemination of the information.
6. Provide for the mutual exchange of ideas and information on services for deaf people between federal, state, and local governmental agencies and private organizations and individuals.

7. Pursuant to section 601K.2, be responsible for budgeting and personnel decisions for the commission and division.

87 Acts, ch 115, §75 SF 374
Subsections 1, 2 and 3 amended

601K.128 Repeal. Repealed by 87 Acts, ch 230, §10 SF 517

CHAPTER 602

THE COURTS

602.1209 General duties of the state court administrator.

The state court administrator shall:

1. Manage the judicial department.
2. Administer funds appropriated to the department.
3. Authorize the filling of vacant court-employee positions, review the qualifications of each person to be employed within the department, and assure that affirmative action goals are being met by the department. The state court administrator shall not approve the employment of a person when either the proposed terms and conditions of employment or the qualifications of the individual do not satisfy personnel policies of the department. The administrator shall implement the comparable worth directives issued under section 602.1204, subsection 2 in all court employment decisions.
4. Supervise the employees of the supreme court and court of appeals, and the clerk of the supreme court.
5. Administer the judicial retirement system as provided in article 9.
6. Collect and compile information and statistical data, and submit reports relating to judicial business and other matters relating to the department.
7. Formulate and submit recommendations for improvement of the judicial system, with reference to the structure of the department and its organization and methods of operation, the selection, compensation, number, and tenure of judicial officers and court employees, and other matters as directed by the chief justice or the supreme court.
8. Call conferences of district court administrators as necessary in the administration of the department.
9. Provide a secretary and clerical services for the board of examiners of shorthand reporters under article 3.
10. Act as executive secretary of the commission on judicial qualifications under article 2.
11. Act as custodian of the bonds and oaths of office of judicial officers and court employees.
12. Issue vouchers for the payment of per diem and expenses from funds appropriated for purposes of articles 2, 3, and 10.
13. Collect and account for fees paid to the board of examiners of shorthand reporters under article 3.
14. Collect and account for fees paid to the board of bar examiners under article 10.
15. Distribute notices of interest rates and changes to interest rates as required by section 668.13, subsection 3.
16. Perform other duties as assigned by the supreme court, or the chief justice, or by law.

87 Acts, ch 157, §2 SF 482
Subsection 15 applies to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, §11 SF 482
NEW subsection 15 and former subsection 15 renumbered as 16

602.1302 State funding.

1. Except as otherwise provided by section 602.1303 or other applicable law, the expenses of operating and maintaining the department shall be paid out of the

general fund of the state from funds appropriated by the general assembly for the department. State funding shall be phased in as provided in section 602.11101.

2. The state shall provide suitable office space for a public defender if established for a county.

3. The supreme court may accept federal funds to be used in the operation of the department, but shall not expend any of these funds except pursuant to appropriation of the funds by the general assembly.

4. A revolving fund is created in the state treasury for the payment of jury and witness fees and mileage by the department. The department shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The department shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative fiscal bureau. The accounting shall include an estimate of disbursements from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

5. The department shall reimburse counties for the costs of witness and mileage fees and for attorney fees paid pursuant to section 232.141, subsection 1.

87 Acts, ch 152, §2 HF 684
NEW subsection 5

602.1303 Local funding.

1. A county or city shall provide the district court for the county with physical facilities, including heat, water, electricity, maintenance, and custodial services, as follows:

a. A county shall provide courtrooms, offices, and other physical facilities which in the judgment of the board of supervisors are suitable for the district court, and for judicial officers of the district court, the clerk of the district court, juvenile court officers, and other court employees.

b. The counties within the judicial districts shall provide suitable offices and other physical facilities for the district court administrator and staff at locations within the judicial districts determined by the chief judge of the respective judicial districts. The county auditor of the host county shall apportion the costs of providing the offices and other physical facilities among the counties within the judicial district in the proportion that the population of each county in the judicial district is to the total population of all counties in the district.

c. If court is held in a city other than the county seat, the city shall provide courtrooms and other physical facilities which in the judgment of the city council are suitable.

2. A county shall pay the expenses of the members of the county magistrate appointing commission as provided in section 602.6501.

3. A county shall pay the compensation and expenses of the jury commission and assistants under chapter 607A.

4. A county shall provide the district court with bailiff and other law enforcement services upon the request of a judicial officer of the district court.

5. A county shall pay the costs incurred in connection with the administration of juvenile justice under section 232.141.

6. A county shall pay the costs and expenses incurred in connection with grand juries.

7. A county or city shall pay the costs of its depositions and transcripts in criminal actions prosecuted by that county or city and shall pay the court fees and costs provided by law in criminal actions prosecuted by that county or city under county or city ordinance. A county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance.

8. A county shall pay the fees and expenses allowed under sections 815.2 and 815.3.

87 Acts, ch 192, §1 HF 493

Subsection 1, NEW paragraph b and former paragraph b relettered as c

602.1514 Judicial compensation commission.

1. A judicial compensation commission is established. The commission is composed of eight members, four of whom shall be appointed by the governor and four of whom shall be appointed by the legislative council. Members of the commission shall be appointed without regard to political affiliation and shall not be state officials or employees, employees of any state department, board, commission, or agency or of any political subdivision of the state.

2. Members of the commission shall serve for a term of office of four years, and for the initial commission, two members determined by lot shall be appointed by each appointing authority to a term of two years. Thereafter, all members shall be appointed to four-year terms. Vacancies on the commission shall be filled for the unexpired term in the same manner as the original appointment.

3. Members of the commission shall serve without compensation, but shall receive actual and necessary expenses, including travel at the state rate. Payment shall be made from funds available pursuant to section 2.12; however, members appointed by the governor shall be paid from funds appropriated to the office of the governor.

4. The commission shall elect its own chairperson from among its membership and shall meet on the call of the chairperson to review judicial salaries and related benefits. The commission shall review the compensation and related benefits paid to statutory judicial officers, and shall review the compensation and related benefits paid for comparable positions in other states, the federal government, and private enterprise. Based on the review and other factors deemed relevant, the commission shall make its recommendation as to judicial salaries and related benefits to the governor and the members of the general assembly. No later than February 1 of each odd-numbered year the commission shall report to the governor and to the general assembly its recommendations.

5. The governor and the general assembly shall consider the recommendations of the commission in determining judicial salaries and related benefits.

87 Acts, ch 227, §31 SF 504

NEW section

602.6404 Qualifications.

1. A magistrate shall be a resident of the county of appointment during the magistrate's term of office. A magistrate shall serve within the judicial district in which appointed, as directed by the chief judge, provided that the chief judge may assign a magistrate to hold court outside of the county of the magistrate's residence only if it is necessary for the orderly administration of justice. A magistrate is subject to reassignment under section 602.6108.

2. A person is not qualified for appointment as a magistrate unless the person can complete the entire term of office prior to reaching age seventy-two.

3. A person is not required to be admitted to the practice of law in this state as a condition of being appointed to the office of magistrate, but the magistrate appointing commission shall first consider applicants who are admitted to practice law in this state when selecting persons for the office of magistrate.

87 Acts, ch 115, §76 SF 374

Subsection 1 amended

602.6405 Jurisdiction—procedure.

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. They also have jurisdiction to exercise the powers specified in sections 644.2 and 644.12, and to hear complaints

or preliminary informations, issue warrants, order arrests, make commitments, and take bail. They also have jurisdiction over violations of section 123.47 and section 123.49, subsection 2, paragraph "h".

2. The criminal procedure before magistrates is as provided in chapters 804, 806, 808, 811, 820 and 821 and rules of criminal procedure 1, 2, 5, 7, 8, and 32 to 56. The civil procedure before magistrates shall be as provided in chapters 631 and 648.

87 Acts, ch 99, §7 HF 318
Subsection 1 amended

602.8102 General duties.

The clerk shall:

1. Keep the office of the clerk at the county seat.
2. Attend sessions of the district court.
3. Keep the records, papers, and seal, and record the proceedings of the district court as provided by law under the direction of the chief judge of the judicial district.
4. Upon the death of a judge of the district court, give written notice to the state comptroller of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court or a judge of the court of appeals or the district court who resides in the clerk's county to the state commissioner of elections, as provided in section 46.12.
5. When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. If the notice is not given, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1 on the money from the date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.
6. On each process issued, indicate the date that it is issued, the clerk's name who issued it, and the seal of the court.
7. Upon return of an original notice to the clerk's office, enter in the appearance or combination docket information to show which parties have been served the notice and the manner and time of service.
8. When entering a lien or indexing an action affecting real estate in the clerk's office, enter the year, month, day, hour, and minute when the entry is made. The clerk shall mail a copy of a mechanic's lien to the owner of the building, land, or improvement which is charged with the lien as provided in section 572.8.
9. Enter in the appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause. A pleading of any description is considered filed when the clerk entered the date the pleading was received on the pleading and the pleading shall not be taken from the clerk's office until the memorandum is made. The memorandum shall be made before the end of the next working day. Thereafter, when a demurrer or motion is sustained or overruled, a pleading is made or amended, or the trial of the cause, rendition of the verdict, entry of judgment, issuance of execution, or any other act is done in the progress of the cause, a similar memorandum shall be made of the action, including the date of action and the number of the book and page of the record where the entry is made. The appearance docket is an index of each suit from its commencement to its conclusion.
10. When title to real estate is finally established in a person by a judgment or decree of the district court or by decision of an appellate court or when the title to real estate is changed by judgment, decree, will, proceeding, or order in probate,

certify the final decree, judgment, or decision under seal of the court to the auditor of the county in which the real estate is located.

11. Keep for public inspection a certified copy of each act of the general assembly and furnish a copy of the act upon payment of a fee as provided in section 3.15.*

12. At the order of a justice of the supreme court, docket without fee any civil or criminal case transferred from a military district under martial law as provided in section 29A.45.

13. Carry out duties as a member of a nominations appeal commission as provided in section 44.7.

14. Maintain a bar admission list as provided in section 46.8.

15. Notify the county commissioner of registration of persons who become ineligible to register to vote because of criminal convictions, mental retardation, or legal declarations of incompetency and of persons whose citizenship rights have been restored as provided in section 48.30.

16. When the auditor is a party to an election contest, carry out duties on behalf of the auditor and issue subpoenas as provided in sections 62.7 and 62.11.

17. Approve the bonds of the members of the board of supervisors as provided in section 64.19.

18. File the bonds and oaths of the members of the board of supervisors as provided in section 64.23.

19. Keep a book of the record of official bonds and record the official bonds of magistrates as provided in section 64.24.

20. Carry out duties relating to proceedings for the removal of a public officer as provided in sections 66.4 and 66.17.

21. Approve the surety bonds of persons accepting appointment as notaries public in the county as provided in section 77.4, subsection 2.

22. Carry out duties as a trustee for incompetent dependents entitled to benefits under chapters 85 and 85A and report annually to the district court concerning money and property received or expended as a trustee as provided under sections 85.49 and 85.50.

23. Carry out duties relating to enforcing orders of the occupational safety and health review commission as provided in section 88.9, subsection 2.

24. Certify the imposition of a mulct tax against property creating a public nuisance to the auditor as provided in section 99.28.

25. Carry out duties relating to the judicial review of orders of the employment appeal board as provided in section 89A.10, subsection 2.

26. With sufficient surety, approve an appeal bond for judicial review of an order or action of the department of natural resources relating to dams and spillways as provided in section 112.8.

27. Docket an appeal from the fence viewer's decision or order as provided in section 113.23.

28. Certify to the recorder the fact that a judgment has been rendered upon an appeal of a fence viewer's order as provided in section 113.24.

29. Reserved.

30. Approve bond sureties and enter in the lien index the undertakings of bonds for abatement relating to the illegal manufacture, sale, or consumption of alcoholic liquors as provided in sections 123.76, 123.79, and 123.80.

31. Reserved.

32. Carry out duties as county registrar of vital statistics as provided in chapter 144.

33. Furnish to the Iowa department of public health a certified copy of a judgment suspending or revoking a professional license as provided in section 147.66.

34. Receive and file a bond given by the owner of a distrained animal to secure its release pending resolution of a suit for damages as provided in sections 188.22 and 188.23.

35. Send notice of the conviction, judgment, and sentence of a person violating the uniform controlled substances laws to the state board or officer who issued a license or registered the person to practice a profession or to conduct business as provided in section 204.412.

36. Carry out duties relating to the commitment of a mentally retarded person as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to the mentally retarded as provided in section 222.57.

38. Order the commitment of a voluntary public patient to the state psychiatric hospital under the circumstances provided in section 225.16.

39. Refer persons applying for voluntary admission to a community mental health center for a preliminary diagnostic evaluation as provided in section 225C.16, subsection 2.

40. Reserved.

41. Carry out duties relating to the involuntary commitment of mentally impaired persons as provided in chapter 229.

42. Serve as clerk of the juvenile court and carry out duties as provided in chapter 232 and article 7.

43. Submit to the director of the division of child and family services of the department of human services a duplicate of the findings of the district court related to adoptions as provided in section 235.3, subsection 7.

44. Certify to the superintendent of each correctional institution the number of days that have been credited toward completion of an inmate's sentence as provided in section 903A.5.

45. Report monthly to the office for planning and programming the following information related to each district court conviction for, acquittal of, or dismissal of a felony, an aggravated misdemeanor, or a serious misdemeanor:

a. The name of the convicted offender or defendant.

b. The statutory citation and character of the offense of which the offender was convicted or the defendant charged.

c. The sentence imposed on the convicted offender.

46. Carry out duties relating to reprieves, pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 248A.5 and 248A.6.

47. Record support payments made pursuant to an order entered under chapter 252A, 598, or 675, or under a comparable statute of a foreign jurisdiction and through setoff of a state or federal income tax refund or rebate, as if the payments were received and disbursed by the clerk; forward support payments received under section 252A.6 to the department of human services and furnish copies of orders and decrees awarding support to parties receiving welfare assistance as provided in section 252A.13.

47A. Accept a check, share draft, draft, or written order on a bank, savings and loan association, credit union, corporation, or person as payment of a support obligation which is payable to the clerk, in accordance with procedures established by the clerk to assure that such negotiable instruments will not be dishonored. The friend of court may perform the clerk's responsibilities under this subsection.

48. Carry out duties relating to the provision of medical care and treatment for indigent persons as provided in chapter 255.

49. Enter a judgment based on the transcript of an appeal to the state board of education against the party liable for payment of costs as provided in section 290.4.

50. Certify the final order of the district court upon appeal of an assessment within a secondary road assessment district to the auditor as provided in section 311.24.
- 50A. Assist the department of transportation in suspending, pursuant to section 321.210A, the motor vehicle licenses of persons who fail to timely pay criminal fines or penalties, surcharges, or court costs related to the violation of a law regulating the operation of a motor vehicle.
51. Forward to the department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections 321J.2 and 321.491.
52. Send to the department of transportation licenses and permits surrendered by a person convicted of being a habitual offender of traffic and motor vehicle laws as provided in section 321.559.
53. If a person fails to satisfy a judgment relating to motor vehicle financial responsibility within sixty days, forward to the director of the department of transportation a certified copy of the judgment as provided in section 321A.12.
54. Approve a bond of a surety company or a bond with at least two individual sureties owning real estate in this state as proof of financial responsibility as provided in section 321A.24.
55. Carry out duties under the Iowa motor vehicle dealers licensing Act as provided in sections 322.10 and 322.24.
56. Carry out duties relating to the enforcement of motor fuel tax laws as provided in sections 324.66 and 324.67.
57. Carry out duties relating to the platting of land as provided in sections 409.9, 409.11, and 409.22.
58. Upon order of the director of revenue and finance, issue a commission for the taking of depositions as provided in section 421.17, subsection 8.
- 58A. Assist the department of revenue and finance in setting off against debtors' income tax refunds or rebates under section 421.17, subsection 25, debts which are due, owing, and payable to the clerk of the district court as criminal fines, civil penalties, surcharges, or court costs.
59. Mail to the director of revenue and finance a copy of a court order relieving an executor or administrator from making an income tax report on an estate as provided in section 422.23.
60. With acceptable sureties, approve the bond of a petitioner for a tax appeal as provided in section 422.29, subsection 2.
61. Certify the final decision of the district court in an appeal of the tax assessments as provided in section 441.39. Costs of the appeal to be assessed against the board of review or a taxing body shall be certified to the treasurer as provided in section 441.40.
62. Certify a final order of the district court relating to the apportionment of tax receipts to the auditor as provided in section 449.7.
63. Carry out duties relating to the inheritance tax as provided in chapter 450.
64. Deposit funds held by the clerk in an approved depository as provided in section 453.1.
65. Carry out duties relating to appeals and certification of costs relating to levee and drainage districts as provided in sections 455.96 through 455.105.
66. Carry out duties relating to the condemnation of land as provided in chapter 472.
67. Forward civil penalties collected for violations relating to the siting of electric power generators to the treasurer of state as provided in section 476A.14, subsection 1.
68. Certify a copy of a decree of dissolution of a business corporation to the secretary of state and the recorder of the county in which the corporation is located as provided in section 496A.100.

69. With acceptable sureties, approve the bond of a petitioner filing an appeal for review of an order of the commissioner of insurance as provided in section 502.606 or 507A.7.

70. Certify a copy of a decree of dissolution of a nonprofit corporation to the secretary of state and the recorder in the county in which the corporation is located as provided in section 504A.62.

71. Carry out duties relating to the enforcement of decrees and orders of reciprocal states under the Iowa unauthorized insurers Act as provided in section 507A.11.

72. Certify copies of a decree of involuntary dissolution of a state bank to the secretary of state and the recorder of the county in which the bank is located as provided in section 524.1311, subsection 4.

73. Certify copies of a decree dissolving a credit union as provided in section 533.21, subsection 4.

74. Refuse to accept the filing of papers to institute legal action under the Iowa consumer credit code if proper venue is not adhered to as provided in section 537.5113.

75. Receive payment of money due to a person who is absent from the state if the address or location of the person is unknown as provided in section 538.5.

76. Carry out duties relating to the appointment of the department of agriculture and land stewardship as receiver for agricultural commodities on behalf of a warehouse operator whose license is suspended or revoked as provided in section 543.3.

77. Certify the signature of the recorder on the transcript of any instrument affecting real estate as provided in section 558.12.

78. Certify an acknowledgment of a written instrument relating to real estate as provided in section 558.20.

79. Collect on behalf of, and pay to the auditor the fee for the transfer of real estate as provided in section 558.66.

80. With acceptable sureties, endorse a bond sufficient to settle a dispute between adjoining owners of a common wall as provided in section 563.11.

81. Carry out duties relating to cemeteries as provided in sections 566.4, 566.7, and 566.8.

82. Carry out duties relating to liens as provided in chapters 570, 571, 572, 574, 580, 581, 582, and 584.

83. Accept applications for and issue marriage licenses as provided in chapter 595.

84. Carry out duties relating to the dissolution of a marriage as provided in chapter 598.

85. Carry out duties relating to the custody of children as provided in chapter 598A.

86. Carry out duties relating to adoptions as provided in chapter 600.

87. Enter upon the clerk's records actions taken by the court at a location which is not the county seat as provided in section 602.6106.

88. Maintain a record of the name, address, and term of office of each member of the county magistrate appointing commission as provided in section 602.6501.

89. Certify to the state court administrator the names and addresses of the magistrates appointed by the county magistrate appointing commission as provided in section 602.6403.

90. Furnish an individual or centralized docket for the magistrates of the county as provided in section 602.6604.

91. Serve as an ex officio jury commissioner and notify appointive commissioners of their appointment as provided in sections 607A.9 and 607A.13.

92. Carry out duties relating to the selection of jurors as provided in chapter 607A.

93. Carry out duties relating to the revocation or suspension of an attorney's authority to practice law as provided in article 10 of this chapter.

94. File and index petitions affecting real estate as provided in sections 617.10 through 617.15.

95. Designate the newspapers in which the notices pertaining to the clerk's office shall be published as provided in section 618.7.

96. With acceptable surety, approve a bond of the plaintiff in an action for the payment of costs which may be adjudged against the plaintiff as provided in section 621.1.

97. Issue subpoenas for witnesses as provided in section 622.63.

98. Carry out duties relating to trials and judgments as provided in sections 624.8 through 624.21 and 624.37.

99. Collect jury fees and court reporter fees as required by chapter 625.

100. Except for an action brought pursuant to chapter 668, when the judgment is for recovery of money, compute the interest from the date of verdict to the date of payment of the judgment as provided in section 625.21.

101. Carry out duties relating to executions as provided in chapter 626.

102. Carry out duties relating to the redemption of property as provided in sections 628.13, 628.18, and 628.20.

103. Record statements of expenditures made by the holder of a sheriff's sale certificate in the encumbrance book and lien index as provided in section 629.3.

104. Carry out duties relating to small claim actions as provided in chapter 631.

105. Carry out duties of the clerk of the probate court as provided in chapter 633.

106. Carry out duties relating to the administration of small estates as provided in sections 635.1, 635.7, 635.9, and 635.11.

107. Carry out duties relating to the attachment of property as provided in chapter 639.

108. Carry out duties relating to garnishment as provided in chapter 642.

109. With acceptable surety, approve bonds of the plaintiff desiring immediate delivery of the property in an action of replevin as provided in sections 643.7 and 643.12.

110. Carry out duties relating to the disposition of lost property as provided in chapter 644.

111. Carry out duties relating to the recovery of real property as provided in section 646.23.

112. Endorse the court's approval of a restored record as provided in section 647.3.

113. When a judgment of foreclosure is entered, file with the recorder an instrument acknowledging the foreclosure and the date of decree and upon payment of the judgment, file an instrument with the recorder acknowledging the satisfaction as provided in sections 655.4 and 655.5.

114. Carry out duties relating to the issuance of a writ of habeas corpus as provided in sections 663.9, 663.43, and 663.44.

115. Accept and docket an application for postconviction review of a conviction as provided in section 663A.3.

116. Report all fines, forfeited recognizances, penalties, and forfeitures as provided in section 602.8106, subsection 4 and section 666.6.

117. Issue a warrant for the seizure of a boat or raft as provided in section 667.2.

118. Carry out duties relating to the changing of a person's name as provided in chapter 674.

119. Notify the state registrar of vital statistics of a judgment determining the paternity of an illegitimate child as provided in section 675.36.

120. Enter a judgment made by confession and issue an execution of the judgment as provided in section 676.4.

121. With acceptable surety, approve the bond of a receiver as provided in section 680.3.

122. Carry out duties relating to the assignment of property for the benefit of creditors as provided in chapter 681.

123. Carry out duties relating to the certification of surety companies and the investment of trust funds as provided in chapter 682.

124. Maintain a separate docket for petitions requesting that the record and evidence in a judicial review proceeding be closed as provided in section 692.5.

125. Furnish a disposition of each criminal complaint or information filed in the district court to the department of public safety as provided in section 692.15.

126. Carry out duties relating to the issuance of warrants to persons who fail to appear to answer citations as provided in section 805.5.

127. Provide for a traffic and scheduled violations office for the district court and service the locked collection boxes at weigh stations as provided in section 805.7.

128. Issue a summons to corporations to answer an indictment as provided in section 807.5.

129. Carry out duties relating to the disposition of seized property as provided in chapter 809.

130. Docket undertakings of bail as liens on real estate and enter them upon the lien index as provided in section 811.4.

131. Hold the amount of forfeiture and judgment of bail in the clerk's office for sixty days as provided in section 811.6.

132. Carry out duties relating to appeals from the district court as provided in chapter 814.

133. Certify costs and fees payable by the state as provided in section 815.1.

134. Notify the director of the Iowa department of corrections of the commitment of a convicted person as provided in section 901.7.

135. Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and chapter 910.

136. Carry out duties relating to the impaneling and proceedings of the grand jury as provided in R.Cr.P. 3, Ia. Ct. Rules, 2nd ed.

137. Issue subpoenas upon application of the prosecuting attorney and approval of the court as provided in R.Cr.P. 5, Ia. Ct. Rules, 2nd ed.

138. Issue summons or warrants to defendants as provided in R.Cr.P. 7, Ia. Ct. Rules, 2nd ed.

139. Carry out duties relating to the change of venue as provided in R.Cr.P. 10, Ia. Ct. Rules, 2nd ed.

140. Issue blank subpoenas for witnesses at the request of the defendant as provided in R.Cr.P. 14, Ia. Ct. Rules, 2nd ed.

141. Carry out duties relating to the entry of judgment as provided in R.Cr.P. 22, Ia. Ct. Rules, 2nd ed.

142. Carry out duties relating to the execution of a judgment as provided in R.Cr.P. 24, Ia. Ct. Rules, 2nd ed.

143. Carry out duties relating to the trial of simple misdemeanors as provided in R.Cr.P. 32 through 56, Ia. Ct. Rules, 2nd ed.

144. Serve notice of an order of judgment entered as provided in R.C.P. 82, Ia. Ct. Rules, 2nd ed.

145. If a party is ordered or permitted to plead further by the court, serve notice to attorneys of record as provided in R.C.P. 86, Ia. Ct. Rules, 2nd ed.

146. Maintain a motion calendar as provided in R.C.P. 117, Ia. Ct. Rules, 2nd ed.

147. Provide notice of a judgment, order, or decree as provided in R.C.P. 120, Ia. Ct. Rules, 2nd ed.

148. Issue subpoenas as provided in R.C.P. 155, Ia. Ct. Rules, 2nd ed.

149. Tax the costs of taking a deposition as provided in R.C.P. 157, Ia. Ct. Rules, 2nd ed.

150. With acceptable sureties, approve a bond filed for change of venue under R.C.P. 167, Ia. Ct. Rules, 2nd ed.

151. Transfer the papers relating to a case transferred to another court as provided in R.C.P. 173, Ia. Ct. Rules, 2nd ed.

152. Maintain a ready calendar list as provided in R.C.P. 181.1, Ia. Ct. Rules, 2nd ed.

153. Assess costs related to a continuance motion as provided in R.C.P. 182, Ia. Ct. Rules, 2nd ed.

154. Carry out duties relating to the impaneling of jurors as provided in R.C.P. 187 through 190, Ia. Ct. Rules, 2nd ed.

155. Furnish a referee, auditor, or examiner with a copy of the order of appointment as provided in R.C.P. 207, Ia. Ct. Rules, 2nd ed.

156. Mail a copy of the referee's, auditor's, or examiner's report to the attorneys of record as provided in R.C.P. 214, Ia. Ct. Rules, 2nd ed.

157. Carry out duties relating to the entry of judgments as provided in R.C.P. 223, 226, 227.1, 228, and 229, Ia. Ct. Rules, 2nd ed.

158. Carry out duties relating to defaults and judgments on defaults as provided in R.C.P. 231, 232, and 233, Ia. Ct. Rules, 2nd ed.

159. Notify the attorney of record if exhibits used in a case are to be destroyed as provided in R.C.P. 253.1, Ia. Ct. Rules, 2nd ed.

160. Docket the request for a hearing on a sale of property as provided in R.C.P. 290, Ia. Ct. Rules, 2nd ed.

161. With acceptable surety, approve the bond of a citizen commencing an action of quo warranto as provided in R.C.P. 300, Ia. Ct. Rules, 2nd ed.

162. Carry out duties relating to the issuance of a writ of certiorari as provided in R.C.P. 306 through 319, Ia. Ct. Rules, 2nd ed.

163. Carry out duties relating to the issuance of an injunction as provided in R.C.P. 320 through 330, Ia. Ct. Rules, 2nd ed.

164. Carry out other duties as provided by law.

87 Acts, ch 41, § 1 SF 231; 87 Acts, ch 115, § 77, 78 SF 374; 87 Acts, ch 157, § 3 SF 482

1987 amendment to subsection 100 applies to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, § 11 SF 482

*Section 3.15 repealed by 87 Acts, ch 1, § 2

Subsection 9 amended

Subsection 31 stricken

Subsection 46 amended

Subsection 100 amended

602.8105 Fees—collection and disposition.

1. The clerk shall collect the following fees:

a. For filing and docketing a petition other than for modification of a dissolution decree filed within one hundred eighty days of the date of the entering of the dissolution decree, or an appeal or writ of error, thirty-five dollars. Four dollars of the fee shall be deposited in the court revenue distribution account established under section 602.8108, and thirty-one dollars of the fee shall be paid into the state treasury. Of the amount paid to the state treasury, one dollar shall be deposited in the judicial retirement fund established in section 602.9104 to be used to pay retirement benefits of the judicial retirement system, and the remainder shall be deposited in the general fund of the state. In counties having a population of one hundred thousand or over, an additional five dollars shall be charged and collected, to be known as the journal publication fee and used for the purposes provided for in section 618.13.

b. For payment in advance of various services and docketing procedures, excluding those for small claims actions and small claims actions on appeal and simple misdemeanor actions and simple misdemeanor actions on appeal, twenty-five dollars.

c. In small claims actions, in addition to the filing fee specified in section 631.6, the following fees shall be charged for the following services:

- (1) For a cause tried by the court, two dollars and fifty cents.
- (2) For an equity case, three dollars.
- (3) For an injunction or other extraordinary process or order, five dollars.
- (4) For a cause continued on application of a party by affidavit, two dollars.
- (5) For a continuance, one dollar.
- (6) For entering a final judgment or decree, one dollar and fifty cents.
- (7) For taxing costs, one dollar.
- (8) For issuing an execution or other process after judgment or decree, two dollars.
- (9) For filing and docketing a transcript of judgment from another county, one dollar.
- (10) For entering a rule or order, one dollar.
- (11) For issuing a writ or order, not including subpoenas, two dollars.
- (12) For entering a judgment by confession, two dollars.
- (13) For entering a satisfaction of a judgment, one dollar.
- (14) For a copy of records or papers filed in the clerk's office, transcripts, and making a complete record, fifty cents for each one hundred words.
- (15) For taking and approving a bond and sureties on the bond, two dollars.

d. For filing, entering, and endorsing a mechanic's lien, three dollars, and if a suit is brought, the fee is taxable as other costs in the action.

e. For filing and entering an agricultural supply dealer's lien, three dollars.

f. For filing and entering any statutory lien not specifically enumerated in this section, three dollars.

g. For a certificate and seal, two dollars.

h. For receiving and filing a declaration of intention and issuing a duplicate, two dollars. For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing, four dollars; and for entering the final order and the issuance of the certificate of citizenship, if granted, four dollars.

i. In addition to the fees required in paragraph "h", the petitioner shall, upon the filing of a petition to become a citizen of the United States, deposit with the clerk money sufficient to cover the expense of subpoenaing and paying the legal fees of witnesses for whom the petitioner may request a subpoena, and upon the final discharge of the witnesses they shall receive, if they demand it from the clerk, the customary and usual witness fees from the moneys collected, and the residue, if any, except the amount necessary to pay the cost of serving the subpoenas, shall be returned by the clerk to the petitioner.

j. For a certificate and seal to an application to procure a pension, bounty, or back pay for a soldier or other person, no charge.

k. For making out a transcript in a criminal case appealed to the supreme court, for each one hundred words, fifty cents.

l. In criminal cases, the same fees for the same services as in civil cases, to be paid by the county or city, which has the duty to prosecute the criminal action, payable as provided in section 602.8109. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law and in habitual offender actions pursuant to section 321.556, and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

m. For issuing a marriage license, fifteen dollars. The clerk of the district court shall remit to the treasurer of state five dollars for each marriage license issued. The treasurer of state shall deposit the funds received in the general fund

of the state. For issuing an application for an order of the district court authorizing the issuance of a license to marry prior to the expiration of three days from the date of filing the application for the license, five dollars.

n. For entering a final decree of dissolution of marriage, fifteen dollars. The fees shall be deposited in the general fund of the state. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

a. For certifying a change in title of real estate, two dollars.

p. In addition to all other fees, for making a complete record in cases where a complete record is required by law or directed by an order of the court, for every one hundred words, twenty cents.

q. For providing transcripts, certificates, other documents, and services in probate matters, the fees specified in section 633.31.

r. The jury fee and court reporter fee specified in chapter 625.

s. For filing and docketing a transcript of judgment from another county, two dollars.

t. For entering a judgment by confession, two dollars.

u. Other fees provided by law.

2. The fees collected by the clerk as provided in subsection 1 shall be deposited in the court revenue distribution account established under section 602.8108, except as otherwise provided by that section or by applicable law.

3. The clerk shall keep an accurate record of the fees collected in a fee book, and make a quarterly report of the fees collected to the supreme court.

4. The clerk shall pay to the treasurer of state on the first Monday which is not a holiday in January and July of each year all fees which have come into the clerk's possession since the date of the preceding payment, which do not belong to the clerk's office, and which are unclaimed. The clerk shall give the treasurer the title of the cause and style of the court in which the suit is pending, the names of the witnesses, jurors, officers, or other persons involved in the action, and the amount of money to which each of the persons is entitled. The treasurer of state shall deposit the funds in the general fund of the state as state revenue, provided that fees so deposited shall be paid to the persons entitled to them upon proper and timely demand. If payment of a fee is demanded, with proper proof, by the person entitled to it within five years from the date that the money is paid to the treasurer, the director of revenue and finance shall issue a warrant to pay the claim. If a person entitled to unclaimed fees does not demand payment within the five years, all rights to the fees or interest in the fees are waived and payment shall not be made.

87 Acts, ch 98, §5 SF 266; 87 Acts, ch 234, §312 HF 671

Subsection 1, paragraph s affirmed and reenacted effective May 4, 1987; legislative findings; 87 Acts, ch 98, §1, 5 SF 266
Subsection 1, paragraph 1 amended

CHAPTER 607A

JURIES

607A.3 Definitions.

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

1. "*Clerk*" means clerk of the district court, deputy clerk, or the clerk's designee.

2. "*Court*" means the district court of this state and includes, when the context requires, a judicial officer as defined in section 602.1101.

3. "*Juror*" means any person selected for service on either the grand or petit jury who attends court when originally instructed to report or is deferred to a future date uncertain, or is on-call and available to report to court when so needed and so requested by the court.

4. "*Jury wheel*" means a physical device or electronic data processing system for storage of the names and addresses or identifying numbers of prospective jurors.

5. "*Motor vehicle operators list*" means the official records maintained by the state of the names and addresses of those individuals in the respective counties retaining valid motor vehicle operator's licenses on or before March 15 of each odd-numbered year.

6. "*Panel*" means those jurors drawn or assigned for service to a courtroom, judge, or trial.

7. "*Pool*" means the sum total of prospective jurors reporting for service and not drawn or assigned to a courtroom, judge or trial.

8. "*Random selection*" means the selection of names in a manner immune to any subjective bias so that no recognizable class of the population from which names are being selected can be purposefully included or excluded.

9. "*Source lists*" means the voter registration list, the motor vehicle operators list and other comprehensive lists of persons residing in a county as identified pursuant to section 607A.22.

10. "*Voter registration list*" means the official records maintained by the state of names and addresses of persons registered to vote on or before March 15 of each odd-numbered year.

11. "*Term of service*" means the period of time a juror is requested to serve.

12. "*Master list*" means the list of names taken from the source lists for possible jury service.

87 Acts, ch 85, §1, 2 HF 64
Subsections 5 and 10 amended

607A.10 Appointive commission—master list.

In each county the judges of the district court of the judicial district in which the county is located shall, on or before March 1 of each odd-numbered year, appoint three competent electors as a jury commission to draw up the master list for the two years beginning the following July 1. The names for the master list shall be taken from the source lists. If all of the source lists are not used to draw up the master list, then the names drawn must be selected in a random manner.

87 Acts, ch 85, §3 HF 64
Terms of commissioners appointed in 1986 extended to 1989; use of master list first used January 1, 1987, extended to July 1, 1989; 87 Acts, ch 85, §7 HF 64
Section amended

607A.15 Qualification—tenure.

The appointive commissioners shall qualify on or before the tenth day of March, following their appointment, by taking the oath of office required of civil officers. The oath shall be subscribed by them and filed in the office of the clerk of the district court. They shall hold office for the term of two years and until their successors are duly appointed and qualified.

87 Acts, ch 85, §4 HF 64
Terms of commissioners appointed in 1986 extended to 1989; 87 Acts, ch 85, §7 HF 64
Section amended

607A.21 Jury lists.

The appointive jury commission or jury manager shall select and return to the clerk of the district court the following:

1. The list of grand jurors: A list of names and addresses of one hundred and fifty persons selected from the source lists from which to draw grand jurors.

2. The list of petit jurors: A list of names and addresses of persons selected from the source lists equal to the number of names necessary to provide jurors needed by the court, with the number to be determined by the jury commission or jury manager.

87 Acts, ch 85, §5 HF 64
Section amended

607A.22 Use of source lists— information provided.

The appointive jury commission or the jury manager shall use all of the following source lists in preparing grand and petit jury lists:

1. The current voter registration list.
2. The current motor vehicle operators list.
3. Any other current comprehensive list of persons residing in the county, including but not limited to the lists of public utility customers, which the appointive jury commission or jury manager determines are useable for the purpose of a juror source list.

The applicable state and local government officials shall furnish, upon request, the appointive jury commission or jury manager with copies of lists necessary for the formulation of source lists at no cost to the commission, manager, or county.

The jury manager or jury commission may request a consolidated source list. A consolidated source list contains all the names and addresses found in either the voter registration list or the motor vehicle operators list, but does not duplicate an individual's name within the consolidated list. State officials shall cooperate with one another to prepare consolidated lists. The jury manager or jury commission may further request that only a randomly chosen portion of the consolidated list be prepared which may consist of either a certain number of names or a certain percentage of all the names in the consolidated list, as specified by the jury manager or jury commission.

87 Acts, ch 85, §6 HF 64
NEW unnumbered paragraph 3

CHAPTER 610

DEFERRAL OF COSTS IN CIVIL AND CRIMINAL PROCEEDINGS (In forma pauperis)

610.1 Affidavit—contents—tolling of limitations.

A court of the district court, court of appeals, or supreme court shall authorize the commencement, prosecution, or defense of a suit, action, proceeding, or appeal, whether civil or criminal, without the prepayment of fees, costs, or security upon a showing that the person is unable to pay such costs or give security. The person shall submit an affidavit stating the nature of the suit, action, proceeding, or appeal and the affiant's belief that there is an entitlement to redress. Such affidavit shall also include a brief financial statement showing the person's inability to pay costs, fees, or give security. Any authorization to proceed without prepayment of fees, costs, or security under this chapter may be made by the court without hearing. The filing of an affidavit to proceed without the prepayment of fees, costs, or security tolls the applicable statute of limitations. Upon the denial of an application and affidavit to proceed without the prepayment of fees, costs, or security, the person shall have the remainder of the

limitations period in which to pay fees, costs, or give security. This section does not allow the deferral of the cost of a transcript.

87 Acts, ch 115, §79 SF 374
Section amended

CHAPTER 613

PARTIES—CAUSES OF ACTION—LIABILITY AND LIMITATIONS ON LIABILITY

613.19 Personal liability.

A director, officer, employee, member, trustee, or volunteer, of a nonprofit organization is not liable on the debts or obligations of the nonprofit organization and a director, officer, employee, member, trustee, or volunteer is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "*nonprofit organization*" includes an unincorporated club, association, or other similar entity, however named, if no part of its income or profit is distributed to its members, directors, or officers.

87 Acts, ch 212, §19 SF 471
NEW section

CHAPTER 613A

TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

613A.1 Definitions.

As used in this chapter, the following terms shall have the following meanings:

1. "*Municipality*" means city, county, township, school district, and any other unit of local government except soil and water conservation districts as defined in section 467A.3, subsection 1, and water resource districts as defined in section 467D.2, subsection 1.
2. "*Governing body*" means the council of a city, county board of supervisors, board of township trustees, local school board, and other boards and commissions exercising quasi-legislative, quasi-executive, and quasi-judicial power over territory comprising a municipality.
3. "*Tort*" means every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute or rule of law.
4. "*Officer*" includes but is not limited to the members of the governing body.

87 Acts, ch 23, §57 SF 382
Subsection 1 amended

613A.2 Liability imposed.

Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

For the purposes of this chapter, employee includes a person who performs services for a municipality whether or not the person is compensated for the services, unless the services are performed only as an incident to the person's attendance at a municipality function.

A person who performs services for a municipality or an agency or subdivision of a municipality and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "compensation" does not include payments to reimburse a person for expenses.

87 Acts, ch 212, §20 SF 471
NEW unnumbered paragraph 3

CHAPTER 618

PUBLICATION AND POSTING OF NOTICES

618.14 Publication of matters of public importance.

The governing body of any municipality or other political subdivision of the state may publish, as straight matter or display, any matter of general public importance, in one or more newspapers, as defined in section 618.3 published in and having general circulation in such municipality or political subdivision, at the legal or appropriate commercial rate, according to the character of the matter published.

In the event there is no such newspaper published in such municipality or political subdivision or in the event publication in more than one such newspaper is desired, publication may be made in any such newspaper having general circulation in such municipality or political subdivision.

87 Acts, ch 221, §34 HF 600
Unnumbered paragraph 1 amended

CHAPTER 622

EVIDENCE

622.66 How far compelled to attend.

Witnesses in civil cases cannot be compelled to attend the district or appellate court out of the state where they are served.

87 Acts, ch 137, §1 HF 655
Section amended

CHAPTER 625

COSTS

625.21 Interest.

Except for an action brought pursuant to chapter 668, when the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto.

87 Acts, ch 157, §4 SF 482
1987 amendment applies to all causes of action accruing on or after July 1, 1987; and to those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, §11 SF 482
Section amended

625.22 Attorney's fees—costs.

When judgment is recovered upon a written contract containing an agreement to pay an attorney's fee, the court shall allow and tax as a part of the costs a reasonable attorney's fee to be determined by the court.

In an action against the maker to recover payment on a dishonored check or draft, as defined in section 554.3104, the plaintiff, if successful, may recover, in addition to all other costs or surcharges provided by law, all court costs incurred, including a reasonable attorney's fee, or an individual's cost of processing a small claims recovery such as lost time and transportation costs from the maker of the check or draft. However, lost time and transportation costs of an assignee shall not be awarded under section 631.14 to a person who in the regular course of business takes assignments of instruments or accounts pursuant to chapter 539. Only actual out-of-pocket expenses incurred in obtaining the small claim recovery may be awarded to the assignee. Any additional charges shall be determined by the court. If the defendant is successful in the action and the court determines the action was frivolous, the court may award the defendant reasonable attorney's fees.

87 Acts, ch 137, §2 HF 655
Section amended

CHAPTER 628

REDEMPTION

628.1A Application of this chapter.

This chapter does not apply in an action to foreclose a real estate mortgage if the plaintiff has elected foreclosure without redemption under section 654.20.

87 Acts, ch 142, §16 HF 599
Effective June 4, 1987
NEW section

628.4 Redemption prohibited.

A party who has stayed execution on the judgment is not entitled to redeem.

87 Acts, ch 142, §1 HF 599
1987 amendment applies to all general and special execution sales held on, after, or within one year before June 4, 1987;
87 Acts, ch 142, §26, 29 HF 599
Section amended

628.28 Redemption of property not used for agricultural or certain residential purposes.

If real property is not used for agricultural purposes, as defined in section 535.13, and is not the residence of the debtor, or if it is the residence of the debtor but not a single-family or two-family dwelling, then the period of redemption after foreclosure is one hundred eighty days. For the first ninety days after the sale the right of redemption is exclusive to the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to one hundred thirty-five days. If a deficiency judgment has been waived the period of redemption is reduced to ninety days. For the first thirty days after the sale the redemption is exclusively the right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to sixty days.

If real property is not used for agricultural purposes, as defined in section 535.13, and is a single-family or two-family dwelling which is the residence of the debtor at the time of foreclosure but the court finds that after foreclosure the dwelling has ceased to be the residence of the debtor and if there are no junior creditors, the court shall order the period of redemption reduced to thirty days from the date of the court order. If there is a junior creditor, the court shall order the redemption period reduced to sixty days. For the first thirty days redemption

is the exclusive right of the debtor and the time periods provided in sections 628.5, 628.15 and 628.16 are reduced to forty-five days.

87 Acts, ch 98, §3 SF 266

Section affirmed and reenacted effective May 4, 1987; legislative findings; 87 Acts, ch 98, §1, 3 SF 266

CHAPTER 631

SMALL CLAIMS

631.14 Representation in small claims actions.

Actions constituting small claims may be brought or defended by an individual, partnership, association, corporation, or other entity. In actions in which a person other than an individual is a party, that person may be represented by an officer or an employee. A person who in the regular course of business takes assignments of instruments or accounts pursuant to chapter 539, which assignments constitute small claims, may bring an action on an assigned instrument or account in the person's own name and need not be represented by an attorney, provided that in an action brought to recover payment on a dishonored check or draft, as defined in section 554.3104, the action is brought in the county of residence of the maker of the check or draft or in the county where the draft or check was first presented. Any person, however, may be represented in a small claims action by an attorney.

87 Acts, ch 137, §5 HF 655

Section amended

631.17 Prohibited practices.

1. The district court, after due notice and hearing, may bar a person from appearing on the person's own behalf in any court governed by this chapter on a cause of action purchased by or assigned for collection to that person for any of the following:

a. Falsely holding oneself out as an attorney at law.

b. Repeatedly filing claims for costs allowed under section 625.22 which have been found by the court to have been exaggerated or without merit.

c. A pattern of conduct in violation of article 7 of chapter 537.

2. A person barred pursuant to subsection 1 shall not derive any benefit, directly or indirectly, from any case brought pursuant to this chapter within the purview of the order of bar issued by the district court.

3. The district court shall dismiss any pending case based on a cause of action purchased or assigned for collection brought on the person's own behalf by a person barred pursuant to subsection 1, and shall assess the costs against that person.

4. The district court shall dismiss any case subsequently brought directly or indirectly by a person subject to a bar pursuant to subsection 1 in violation of that subsection and shall assess all costs to that person, and the court shall assess a further civil fine of one hundred dollars against that person for each such case dismissed.

5. The district court shall retain jurisdiction over a person barred pursuant to subsection 1 and may punish violations of the court's order of bar as a matter of criminal contempt.

87 Acts, ch 98, §6 SF 266

Section affirmed and reenacted effective May 4, 1987; legislative findings; 87 Acts, ch 98, §1, 6 SF 266

CHAPTER 633

PROBATE CODE

633.477 Final report.

Each personal representative shall, in the personal representative's final report, set forth:

1. An accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the decedent's interest therein, which has not been sold and conveyed by the personal representative.

2. Whether the deceased died testate or intestate.

3. The name and place of residence of the surviving spouse, or that none survived the deceased.

4. In intestate estates, the name and place of residence of each of the heirs and their relationship to the deceased.

5. In testate estates, the name and place of residence of each of the devisees and their relationship to the deceased, and the name and residence of after-born children, if any, as defined in section 633.267.

6. Whether any legacy or devise remains a charge on the real estate, and, if so, the nature and amount thereof.

7. Whether any distributee is under any legal disability.

8. The name of the conservator or trustee for any distributee, and the court from which the letters were issued.

9. An accounting of all property coming into the hands of the personal representative and a detailed accounting of all cash receipts and disbursements. The accounting may be omitted if waived by all interested parties.

10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with and a statement as to whether the federal estate tax due has been paid and whether a lien continues to exist for any federal estate tax.

11. Upon the request of the personal representative, an itemization of services performed, time spent for such services, and responsibilities assumed by the personal representative's attorney for all estates of decedents dying after January 1, 1981. If the itemization is not included, there shall be set forth a statement that the personal representative was informed of the provisions of this subsection and did not request the itemization.

87 Acts, ch 54, §1 HF 132
Subsection 9 amended

633.535 Person causing death.

1. A person who intentionally and unjustifiably causes or procures the death of another shall not receive any property, benefit, or other interest by reason of the death as an heir, distributee, beneficiary, appointee, or in any other capacity whether the property, benefit, or other interest passed under any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. The property, benefit, or other interest shall pass as if the person causing death died before the decedent.

2. A joint tenant who intentionally and unjustifiably causes or procures the death of another joint tenant thereby affecting* their interests so that the share of the decedent passes as the decedent's property and the person causing death has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entireties in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship rights.

3. A named beneficiary of a bond, life insurance policy, or any other contractual arrangement who intentionally and unjustifiably causes or procures the death of the principal obligee or person upon whose life the policy is issued or whose death generates the benefits under any other contractual arrangement is

not entitled to any benefit under the bond, policy, or other contractual arrangement, and the benefits become payable as though the person causing death had predeceased the decedent.

87 Acts, ch 9, §1 HF 168

**"Affects" probably intended

Section stricken and rewritten

633.536 Procedure to deny benefits to a person causing death.

A determination under section 633.535 may be made by any court of competent jurisdiction by a preponderance of the evidence separate and apart from any criminal proceeding arising from the death. However, such a civil proceeding shall not proceed to trial, and the person causing death is not required to submit to discovery in such a civil proceeding until the criminal proceeding has been finally determined by the trial court, or in the event no criminal charge has been brought, until six months after the date of death. A person convicted of murder or voluntary manslaughter of the decedent is conclusively presumed to have intentionally and unjustifiably caused the death for purposes of this section and section 633.535.

87 Acts, ch 9, §2 HF 168

Section stricken and rewritten

633.537 Third party nonliability.

Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of section 633.535 unless prior to payment it has received at its home office or principal address written notice of the claimed applicability of section 633.535.

87 Acts, ch 9, §3 HF 168

Section stricken and rewritten

633.635 Responsibilities of guardian.

1. A guardian may be granted the following powers and duties which may be exercised without prior court approval:

- a. Providing for the care, comfort and maintenance of the ward, including the appropriate training and education to maximize the ward's potential.
- b. Taking reasonable care of the ward's clothing, furniture, vehicle and other personal effects.
- c. Assisting the ward in developing maximum self-reliance and independence.
- d. Ensuring the ward receives necessary emergency medical services.
- e. Ensuring the ward receives professional care, counseling, treatment or services as needed.
- f. Any other powers or duties the court may specify.

2. A guardian may be granted the following powers which may only be exercised upon court approval:

- a. Changing, at the guardian's request, the ward's permanent residence if the proposed new residence is more restrictive of the ward's liberties than the current residence.
- b. Arranging the provision of major elective surgery or any other nonemergency major medical procedure.
- c. Consent to the withholding or withdrawal of life-sustaining procedures in accordance with chapter 144A.

3. The court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, and may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the ward.

4. From time to time, upon a proper showing, the court may alter the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard.

87 Acts, ch 100, §2 HF 360
Subsection 2, NEW paragraph c

CHAPTER 639

ATTACHMENT

639.3 Grounds.

The petition or amendment to petition which asks an attachment, must in all cases be sworn to. It must state one or more of the following grounds:

1. That the defendant is a foreign corporation or acting as such.
2. That the defendant is a nonresident of the state.
3. That the defendant is about to remove the defendant's property out of the state without leaving sufficient remaining for the payment of the defendant's debts.
4. That the defendant has disposed of the defendant's property, in whole or in part, with intent to defraud the defendant's creditors.
5. That the defendant is about to dispose of the defendant's property with intent to defraud the defendant's creditors.
6. That the defendant has absconded, so that the ordinary process cannot be served upon the defendant.
7. That the defendant is about to remove permanently out of the county, and has property therein not exempt from execution, and that the defendant refuses to pay or secure the plaintiff.
8. That the defendant is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff.
9. That the defendant is about to remove the defendant's property or a part thereof out of the county with intent to defraud the defendant's creditors.
10. That the defendant is about to convert the defendant's property or a part thereof into money for the purpose of placing it beyond the reach of the defendant's creditors.
11. That the defendant has property or rights in action which the defendant conceals.
12. That the debt is due for property obtained under false pretenses.
13. That the defendant is about to dispose of property belonging to the plaintiff.
14. That the defendant is about to convert the plaintiff's property or a part thereof into money for the purpose of placing it beyond the reach of the plaintiff.
15. That the defendant is about to move permanently out of state, and refuses to return property belonging to the plaintiff.

87 Acts, ch 80, §25 HF 585
NEW subsections 13, 14 and 15

CHAPTER 642

GARNISHMENT

642.22 Validity of garnishment notice—duty to monitor account.

1. A notice of garnishment served upon a garnishee is effective without serving another notice until the earliest of the following:

- a. The annual maximum permitted to be garnished under section 642.21 has been withheld.

- b. The writ of execution expires.
 - c. The judgment is satisfied.
 - d. The garnishee is served with a notice that the garnishment shall cease.
2. A supervised financial organization, as defined in section 537.1301, subsection 41, which is garnished for an account of a defendant, after paying the sheriff any amounts then in the account, shall monitor the account for any additional amounts at least monthly while the garnishment notice is effective.
3. Expiration of the execution does not affect a garnishee's duties and liabilities respecting property already withheld pursuant to the garnishment.

87 Acts, ch 98, §7 SF 266

Section affirmed and reenacted effective May 4, 1987; legislative findings; 87 Acts, ch 98, §1, 7 SF 266

CHAPTER 654

FORECLOSURE OF REAL ESTATE MORTGAGES

654.2B Requirements of notice of right to cure.

The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the obligation secured by the deed of trust or mortgage and of the borrower's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered and a statement that if the borrower does not cure the alleged default the creditor is entitled to proceed with initiating a foreclosure action or procedure.

87 Acts, ch 142, §13 HF 599

Amendment effective June 4, 1987

Section amended

654.2C Mediation notice—foreclosure on agricultural property.

A person shall not initiate a proceeding under this chapter to foreclose a deed of trust or mortgage on agricultural property, as defined in section 654A.1, which is subject to chapter 654A and which is subject to a debt of twenty thousand dollars or more under the deed of trust or mortgage unless the person receives a mediation release under section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

87 Acts, ch 73, §1 HF 489

Section amended

654.2D Nonagricultural land—notice, right to cure default.

1. Except as provided in section 654.2A, a creditor shall comply with this section before initiating an action pursuant to this chapter or initiating the procedure established pursuant to chapter 655A to foreclose on a deed of trust or mortgage.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on a homestead is in default shall give the borrower a notice of right to cure as provided in section 654.2B. A creditor gives the notice when the creditor delivers the notice to the consumer or mails the notice to the borrower's residence as defined in section 537.1201, subsection 4.

3. The borrower has a right to cure the default within thirty days from the date the creditor gives the notice.

4. a. The creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until thirty days after a proper notice of right to cure is given.

b. Until the expiration of thirty days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, or the amount stated in the notice of right to cure, whichever is less, or by tendering any other performance necessary to cure a default which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage.

6. This section does not prohibit the creditor from enforcing the creditor's interest in the land at any time after the creditor has complied with this section and the borrower did not cure the alleged default.

7. A borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default.

8. This section does not apply if the creditor is an individual or individuals, or if the mortgaged property is property other than a one-family or two-family dwelling which is the residence of the mortgagor.

9. An affidavit signed by an officer of the creditor that the creditor has complied with this section is deemed to be conclusive evidence of compliance by all persons other than the creditor and the mortgagor.

87 Acts, ch 142, §14 HF 599
Effective June 4, 1987
NEW section

654.5 Judgment—sale and redemption.

When a mortgage or deed of trust is foreclosed, the court shall render judgment for the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the judgment, with interest and costs. A special execution shall issue accordingly, and the sale under the special execution is subject to redemption as in cases of sale under general execution unless the plaintiff has elected foreclosure without redemption under section 654.20.

87 Acts, ch 142, §2 HF 599
Amendment effective June 4, 1987
Section amended

654.14 Preference in receivership—application of rents.

In an action to foreclose a real estate mortgage, if a receiver is appointed to take charge of the real estate, preference shall be given to the owner or person in actual possession, subject to approval of the court, in leasing the mortgaged premises. If the real estate is agricultural land used for farming, as defined in section 172C.1, the owner or person in actual possession shall be appointed as receiver without bond, provided that all parties agree to the appointment. The rents, profits, avails, and income derived from the real estate shall be applied as follows:

1. To the cost of receivership.
2. To the payment of taxes due or becoming due during said receivership.
3. To pay the insurance on buildings on the premises and/or such other benefits to the real estate as may be ordered by the court.
4. The balance shall be paid and distributed as determined by the court.

If the owner or person in actual possession of agricultural land as defined in section 172C.1 is not afforded a right of first refusal in leasing the mortgaged premises by the receiver, the owner or person in actual possession has a cause of action against the receiver to recover either actual damages or a one thousand dollar penalty, and costs, including reasonable attorney's fees. The receiver shall deliver notice to the owner or person in actual possession or the attorney of the

owner or person in actual possession, of an offer made to the receiver, the terms of the offer, and the name and address of the person making the offer. The delivery shall be made personally with receipt returned or by certified or registered mail, with the proper postage on the envelope, addressed to the owner or person in actual possession or the attorney of the owner or person in actual possession. An offer shall be deemed to have been refused if the owner or person in actual possession or the attorney of the owner or person in actual possession does not respond within ten days following the date that the notice is mailed.

87 Acts, ch 142, §3 HF 599

Unnumbered paragraph 2 applies to all leases executed by receivers on or after June 4, 1987; 87 Acts, ch 142, §27, 29 HF 599

NEW unnumbered paragraph 2

654.15 Continuance—moratorium.

1. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner enters an appearance and files an answer admitting some indebtedness and breach of the terms of the designated instrument, which admissions cannot be withdrawn or denied after a continuance is granted, the owner may apply for a continuance of the foreclosure action if the default or inability of the owner to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy. The application must be in writing and filed at or before final decree. Upon the filing of the application the court shall set a day for hearing on the application and provide by order for notice to be given to the plaintiff of the time fixed for the hearing. If the court finds that the application is made in good faith and is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests, the court may continue the foreclosure proceeding as follows:

a. If the default or breach of terms of the written instrument on which the action is based occurs on or before the first day of March of any year by reason of any of the causes specified in this subsection, causing the loss and failure of crops on the land involved in the previous year, the continuance shall end on the first day of March of the succeeding year.

b. If the default or breach of terms of the written instrument occurs after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes set out in this subsection, the continuance shall end on the first day of March of the second succeeding year.

c. Only one continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may grant a second continuance for a further period as the court deems just and equitable, not to exceed one year.

d. The order shall provide for the appointment of a receiver to take charge of the property and to rent the property. The owner or person in possession shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance on the buildings on the premises.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited on the instrument.

An owner of a small business may apply for a continuance as provided in this subsection if the real estate subject to foreclosure is used for the small business. The court may continue the foreclosure proceeding if the court finds that the application is made in good faith and is supported by competent evidence showing

that the default in payment or inability to pay is due to the economic condition of the customers of the small business, because the customers of the small business have been significantly economically distressed as a result of drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests. The length of the continuance shall be determined by the court, but shall not exceed two years.

2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real estate, and contracts for the purchase of real estate, an owner of real estate may apply for a moratorium as provided in this subsection if the governor declares a state of economic emergency. The governor shall state in the declaration the types of real estate eligible for a moratorium continuance, which may include real estate used for farming; designated types of real estate not used for farming, including real estate used for small business; or all real estate. Only property of a type specified in the declaration which is subject to a mortgage, deed of trust, or contract for purchase entered into before the date of the declaration is eligible for a moratorium. In an action for the foreclosure of a mortgage, deed of trust, or contract for purchase of real estate eligible for a moratorium, the owner may apply for a continuation of the foreclosure if the owner has entered an appearance and filed an answer admitting some indebtedness and breach of the terms of the designated instrument. The admissions cannot be withdrawn or denied after a continuance is granted. Applications for continuance made pursuant to this subsection must be filed within one year of the governor's declaration of economic emergency. Upon the filing of an application as provided in this subsection, the court shall set a date for hearing and provide by order for notice to the parties of the time for the hearing. If the court finds that the application is made in good faith and the owner is unable to pay or perform, the court may continue the foreclosure proceeding as follows:

a. If the application is made in regard to real estate used for farming, the continuance shall terminate two years from the date of the order. If the application is made in regard to real estate not used for farming, the continuance shall terminate one year from the date of the order.

b. Only one continuance shall be granted the applicant for each written instrument or contract under each declaration.

c. The court shall appoint a receiver to take charge of the property and to rent the property. The applicant shall be given preference in the occupancy of the property. The receiver, who may be the applicant, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership, including the required interest on the written instrument and the costs of operation.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance deemed necessary by the court including but not limited to insurance on the buildings on the premises and liability insurance.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure was based, to be credited against the principal due on the written instrument.

d. A continuance granted under this subsection may be terminated if the court finds, after notice and hearing, all of the following:

(1) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to restructure the debt obligations of the applicant.

(2) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to utilize state and federal programs designed and implemented to provide debtor relief options. For the purposes of subparagraph (1) and this subparagraph, the determination of reasonableness shall take into account the financial condition of the party seeking foreclosure, and the financial strength and the long-term financial survivorship potential of the applicant.

(3) The applicant has failed to pay interest due on the written instrument.

3. As used in this section, "small business" means the same as defined in section 220.1.

87 Acts, ch 115, §80 SF 374

Subsection 2, paragraph c, subparagraph (4) amended

654.16 Separate redemption of homestead.

If a foreclosure sale is ordered on agricultural land used for farming, as defined in section 175.2, the mortgagor may, by a date set by the court but not later than ten days before the sale, designate to the court the portion of the land which the mortgagor claims as a homestead. The homestead may be any contiguous portion of forty acres or less of the real estate subject to the foreclosure. The homestead shall contain the residence of the mortgagor and shall be as compact as practicable.

If the designated homestead is sold at a foreclosure sale in order to satisfy the judgment, the court shall determine the fair market value of the designated homestead. The court may consult with the county appraisers appointed pursuant to section 450.24, or with one or more independent appraisers, to determine the fair market value of the designated homestead.

The mortgagor may redeem the designated homestead by tendering the fair market value, as determined pursuant to this section, of the designated homestead at any time within two years from the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628. However, this paragraph shall not apply to a member institution which has purchased a designated homestead at a foreclosure sale.

The mortgagor may redeem the designated homestead from a member institution, which has purchased the designated homestead at a foreclosure sale, by tendering the fair market value of the designated homestead within one year from the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628.

If the member institution which has purchased the designated homestead at a foreclosure sale is not a state bank as defined in section 524.103, the following shall apply:

1. At the time the sheriff's deed is issued, the institution shall notify the mortgagor of the mortgagor's right of first refusal. A copy of this unnumbered paragraph and subsections 1 through 5 and titled "Notice of Right of First Refusal" is sufficient notice.

2. If within one year after a sheriff's deed is issued to the institution, the institution proposes to sell or otherwise dispose of the designated homestead, in a transaction other than a public auction, the institution shall first offer the mortgagor the opportunity to repurchase the designated homestead on the same terms the institution proposes to sell or dispose of the designated homestead. If the institution seeks to sell or otherwise dispose of the designated homestead by public auction within one year after a sheriff's deed is issued to the institution, the mortgagor must be given sixty days' notice of all of the following:

a. The date, time, place, and procedures of the auction sale.

b. Any minimum terms or limitations imposed upon the auction.

3. The institution is not required to offer the mortgagor financing for the purchase of the homestead.

4. The mortgagor has ten business days after being given notice of the terms of the proposed sale or disposition, other than a public auction, in which to exercise the right to repurchase the homestead by submitting a binding offer to the institution on the same terms as the proposed sale or other disposition, with closing to occur within thirty days after the offer unless otherwise agreed by the institution. After the expiration of either the period for offer or the period for closing, without submission of an offer or a closing occurring, the institution may

sell or otherwise dispose of the designated homestead to any other person on the terms upon which it was offered to the mortgagor.

5. Notice of the mortgagor's right of first refusal, a proposed sale, auction, or other disposition, or the submission of a binding offer by the mortgagor, is considered given on the date the notice or offer is personally served on the other party or on the date the notice or offer is mailed to the other party's last known address by registered or certified mail, return receipt requested. The right of first refusal provided in this section is not assignable, but may be exercised by the mortgagor's successor in interest, receiver, personal representative, executor, or heir only in case of bankruptcy, receivership, or death of the mortgagor.

As used in this section, "*member institution*" means any lending institution that is a member of the federal deposit insurance corporation, the federal savings and loan insurance corporation, the national credit union administration, or an affiliate of such institution.

87 Acts, ch 142, §4, 5 HF 599

This section, as amended by 1987 amendments including new unnumbered paragraphs 3-6, applies to all foreclosure sales of agricultural land held on or after June 4, 1987, and to foreclosure sales of agricultural land held within one year before June 4, 1987 if the holder of the sheriff's certificate of sale is a mortgagee who has not sold or otherwise disposed of the agricultural land and whose mortgage was enforced by the foreclosure sale. 87 Acts, ch 142, §28, 29 HF 599

Unnumbered paragraph 2 amended

NEW unnumbered paragraphs 3-6

654.20 Foreclosure without redemption—nonagricultural land.

If the mortgaged property is not used for an agricultural purpose as defined in section 535.13, the plaintiff in an action to foreclose a real estate mortgage may include in the petition an election for foreclosure without redemption. The election is effective only if the first page of the petition contains the following notice in capital letters of the same type or print size as the rest of the petition:

NOTICE

THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION. THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL TWELVE MONTHS (or SIX MONTHS if the petition includes a waiver of deficiency judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY PURCHASE AT THE SALE.

If the plaintiff has not included in the petition a waiver of deficiency judgment, then the notice shall include the following:

IF YOU DO NOT FILE A WRITTEN DEMAND TO DELAY THE SALE AND IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT WILL NOT BE ENTERED AGAINST YOU. IF YOU DO FILE A WRITTEN DEMAND TO DELAY THE SALE, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU IF THE PROCEEDS FROM THE SALE OF THE MORTGAGED PROPERTY ARE INSUFFICIENT TO SATISFY THE AMOUNT OF THE MORTGAGE DEBT AND COSTS.

IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS NOT A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU WHETHER OR NOT YOU FILE A WRITTEN DEMAND TO DELAY THE SALE.

If the election for foreclosure without redemption is made, then sections 654.21 through 654.26 apply.

87 Acts, ch 142, §6 HF 599
Effective June 4, 1987
NEW section

654.20A Rights reserved.

A mortgage or deed of trust shall not contain the notice under section 654.20.

87 Acts, ch 142, §15 HF 599
Effective June 4, 1987
NEW section

654.21 Demand for delay of sale.

At any time prior to entry of judgment, the mortgagor may file a demand for delay of sale. If the demand is filed, the sale shall be held promptly after the expiration of two months from entry of judgment. However, if the demand is filed and the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, the sale shall be held promptly after the expiration of twelve months, or six months if the petition includes a waiver of deficiency judgment, from entry of judgment. If the demand is filed, the mortgagor and mortgagee subsequently may file a stipulation that the sale may be held promptly after the stipulation is filed and that the mortgagee waives the right to entry of a deficiency judgment. If the stipulation is filed, the sale shall be held promptly after the filing. At any time prior to judgment, the mortgagor may pay the plaintiff the amount claimed in the petition and, if paid, the foreclosure action shall be dismissed. At any time after judgment and before the sale, the mortgagor may pay the plaintiff the amount of the judgment and, if paid, the judgment shall be satisfied of record and the sale shall not be held.

87 Acts, ch 142, §7 HF 599
Effective June 4, 1987
NEW section

654.22 No demand for delay of sale.

If the mortgagor does not file a demand for delay of sale, the sale shall be held promptly after entry of judgment.

87 Acts, ch 142, §8 HF 599
Effective June 4, 1987
NEW section

654.23 No redemption rights after sale.

The mortgagor has no right to redeem after sale. Junior lienholders have no right to redeem after sale. The mortgagor or a junior lienholder may purchase at the sale and, if so, acquire the same title as would any other purchaser. If the mortgagor at the sale bids an amount equal to the judgment, the property shall be sold to the mortgagor even though other persons may bid an amount which is more than the judgment. If the mortgagor purchases at the sale, the liens of junior lienholders shall not be extinguished. If a person other than the mortgagor purchases at the sale, the liens of junior lienholders are extinguished.

87 Acts, ch 142, §9 HF 599
Effective June 4, 1987
NEW section

654.24 Deed and possession.

The purchaser at the sale is entitled to an immediate deed and immediate possession.

87 Acts, ch 142, §10 HF 599
Effective June 4, 1987
NEW section

654.25 Application of other statutes.

If the plaintiff has elected foreclosure without redemption, chapter 628 does not apply. A provision in a mortgage permitted by section 628.26 or 628.27 shall not

be construed as an agreement by the mortgagee not to elect foreclosure without redemption. The election may be made in any petition filed on or after June 4, 1987. The election for foreclosure without redemption is not a waiver of the plaintiff's rights under section 654.6 except as provided in section 654.26.

87 Acts, ch 142, §11 HF 599
Effective June 4, 1987
NEW section

654.26 No deficiency judgment in certain cases.

If the plaintiff has elected foreclosure without redemption, the plaintiff may include in the petition a waiver of deficiency judgment. If the plaintiff has elected foreclosure without redemption and does not include in the petition a waiver of deficiency judgment, if the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, and if the mortgagor does not file a demand for delay of sale under section 654.21, then the plaintiff shall not be entitled to the entry of a deficiency judgment under section 654.6.

87 Acts, ch 142, §12 HF 599
Effective June 4, 1987
NEW section

CHAPTER 654A

FARM MEDIATION

654A.6 Mandatory mediation proceedings.

1. A creditor subject to this chapter desiring to initiate a proceeding to enforce a debt against agricultural property which is real estate under chapter 654, to forfeit a contract to purchase agricultural property under chapter 656, to enforce a secured interest in agricultural property under chapter 554, or to otherwise garnish, levy on, execute on, seize, or attach agricultural property, shall file a request for mediation with the farm mediation service. The creditor shall not begin the proceeding subject to this chapter until the creditor receives a mediation release, or until the court determines after notice and hearing that the time delay required for the mediation would cause the creditor to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release regardless of its validity. The time period for the notice of right to cure provided in section 654.2A shall run concurrently with the time period for the mediation period provided in this section and section 654A.10.

2. Upon the receipt of a request for mediation, the farm mediation service shall conduct an initial consultation with the borrower without charge. The borrower may waive mediation after the initial consultation.

87 Acts, ch 73, §2 HF 489
Subsection 1 amended

CHAPTER 655A

NONJUDICIAL FORECLOSURE OF NONAGRICULTURAL MORTGAGES

Effective June 4, 1987

655A.1 Title.

This chapter shall be known as the "*Nonjudicial Foreclosure of Nonagricultural Mortgages*".

87 Acts, ch 142, §17 HF 599
NEW section

655A.2 Conditions prescribed.

Except as provided in section 655A.9, a mortgage may be foreclosed, at the option of the mortgagee, as provided in this chapter.

87 Acts, ch 142, §18 HF 599
NEW section

655A.3 Notice.

1. The nonjudicial foreclosure is initiated by the mortgagee by serving on the mortgagor a written notice which shall:

a. Reasonably identify the mortgage and accurately describe the real estate covered.

b. Specify the terms of the mortgage with which the mortgagor has not complied. The terms shall not include any obligation arising from acceleration of the indebtedness secured by the mortgage.

c. State that, unless within thirty days after the completed service of the notice the mortgagor performs the terms in default or files with the recorder of the county where the mortgaged property is located a rejection of the notice pursuant to section 655A.6 and serves a copy of the rejection upon the mortgagee, the mortgage will be foreclosed.

The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES. IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE EXTINGUISHED.

2. The mortgagee shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the mortgagor, and on all junior lienholders of record.

3. As used in this chapter, "*mortgagee*" and "*mortgagor*" include a successor in interest.

87 Acts, ch 142, §19 HF 599
NEW section

655A.4 Service.

Notice or rejection of notice under this chapter shall be served as provided in the rules of civil procedure for service of original notice.

87 Acts, ch 142, §20 HF 599
Notice; R.C.P. 49 et seq.
NEW section

655A.5 Compliance with notice.

If the mortgagor or a junior lienholder performs, within thirty days of completed service of notice, the breached terms specified in the notice, then the right to foreclose for the breach is terminated.

87 Acts, ch 142, §21 HF 599
NEW section

655A.6 Rejection of notice.

If either the mortgagor, or successor in interest of record including a contract purchaser, within thirty days of service of the notice pursuant to section 655A.3, files with the recorder of the county where the mortgaged property is located, a rejection of the notice reasonably identifying the notice which is rejected together with proofs of service required under section 655A.4 that the rejection has been

served on the mortgagee, the notice served upon the mortgagor pursuant to section 655A.3 is of no force or effect.

87 Acts, ch 142, §22 HF 599
NEW section

655A.7 Proof and record of service.

If the terms and conditions as to which there is default are not performed within the thirty days, the party serving the notice or causing it to be served shall file for record in the office of the county recorder a copy of the notice with proofs of service required under section 655A.4 attached or endorsed on it and, in case of service by publication, a personal affidavit that personal service could not be made within this state, and when those documents are filed and recorded, the record is constructive notice to all parties of the due foreclosure of the mortgage.

87 Acts, ch 142, §23 HF 599
NEW section

655A.8 Effect of foreclosure.

Upon completion of the filings required under section 655A.7 and if no rejection of notice has been filed pursuant to section 655A.6, then without further act or deed:

1. The mortgagee acquires and succeeds to all interest of the mortgagor in the real estate.
2. All liens which are inferior to the lien of the foreclosed mortgage are extinguished.
3. The indebtedness secured by the foreclosed mortgage is extinguished.

87 Acts, ch 142, §24 HF 599
NEW section

655A.9 Application of chapter.

This chapter does not apply to real estate used for an agricultural purpose as defined in section 535.13.

87 Acts, ch 142, §25 HF 599
NEW section

CHAPTER 656

FORFEITURE OF REAL ESTATE CONTRACTS

656.2 Notice.

1. The forfeiture shall be initiated by the vendor by serving on the vendee a written notice which shall:

a. Reasonably identify the contract and accurately describe the real estate covered.

b. Specify the terms of the contract with which the vendee has not complied.

c. State that unless, within thirty days after the completed service of the notice, the vendee performs the terms in default and pays the reasonable costs of serving the notice, the contract will be forfeited.

d. Specify the amount of attorney fees claimed by the vendor pursuant to section 656.7 and state that payment of the attorney fees is not required to comply with the notice and prevent forfeiture.

2. The vendor shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the vendee, and on all the vendee's mortgagees of record. The vendee's mortgagees of record shall include all assignees of record for collateral purposes.

3. As used in this section, the terms “*vendor*” and “*vendee*” include a successor in interest but the term “*vendee*” excludes a vendee who assigned or conveyed of record all of the vendee’s interest in the real estate.

87 Acts, ch 166, §1 HF 130
Subsections 2 and 3 amended

656.8 Mediation notice.

Notwithstanding sections 656.1 through 656.5, a person shall not initiate proceedings under this chapter to forfeit a real estate contract for the purchase of agricultural property, as defined in section 654A.1, which is subject to an outstanding obligation on the contract of twenty thousand dollars or more unless the person received a mediation release under section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

87 Acts, ch 73, §3 HF 489
Section amended

CHAPTER 657A

ABANDONED OR UNSAFE BUILDINGS—ABATEMENT BY REHABILITATION

657A.2 Petition.

1. A petition for abatement under this chapter may be filed in the district court of the county in which the property is located, by the city in which the property is located, a neighboring landowner, or a duly organized nonprofit corporation which has as one of its goals the improvement of housing conditions in the county or city in which the property in question is located. Service on the owner shall be by personal service or by certified mail, or if service cannot be made by either method, by posting the notice in a conspicuous place on the building and by publication.

2. If a petition filed pursuant to this chapter alleges that a building is abandoned or is in a dangerous or unsafe condition, the city, neighboring landowner, or nonprofit corporation may apply for an injunction requiring the owner of the building to correct the condition or to eliminate the condition or violation. The court shall conduct a hearing at least twenty days after written notice of the application for an injunction and of the date and time of the hearing is served upon the owner of the building. Notice of the hearing shall be served in the manner provided in subsection 1.

3. If the court finds at the hearing that the building is abandoned or is in a dangerous or unsafe condition, the court shall issue an injunction requiring the owner to correct the condition or to eliminate the violation, or another order that the court considers necessary or appropriate to correct the condition or to eliminate the violation.

4. In a proceeding under this chapter, if the court makes the finding described in subsection 3 and additionally finds that the building in question is a public nuisance and that the owner of the building has been afforded reasonable opportunity to correct the dangerous or unsafe condition found or to eliminate the violation found but has refused or failed to do so, the judge shall cause notice of the findings to be served upon the owner, each mortgagee or other lienholder of record, and other known interested persons, and shall order the persons served to show cause why a receiver should not be appointed to perform work and to furnish material that reasonably may be required to abate the public nuisance. The notice shall be served in the manner provided in subsection 1.

5. In a proceeding under this chapter, if the court determines the building is not abandoned or is not in a dangerous or unsafe condition, the court shall dismiss the petition and may require the petitioner to pay the owner's reasonable attorney fees actually incurred.

6. For the purpose of abatement in connection with property in a city with a population of less than one hundred thousand a petition for abatement must include the allegation that a building is abandoned and is in a dangerous or unsafe condition.

87 Acts, ch 113, §1, 2 SF 319
Subsections 2 and 3 amended
NEW subsection 6

CHAPTER 668

LIABILITY IN TORT—COMPARATIVE FAULT

668.3 Comparative fault—effect—payment method.

1. Contributory fault shall not bar recovery in an action by a claimant to recover damages for fault resulting in death or in injury to person or property unless the claimant bears a greater percentage of fault than the combined percentage of fault attributed to the defendants, third-party defendants and persons who have been released pursuant to section 668.7, but any damages allowed shall be diminished in proportion to the amount of fault attributable to the claimant.

2. In the trial of a claim involving the fault of more than one party to the claim, including third-party defendants and persons who have been released pursuant to section 668.7, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. The amount of damages each claimant will be entitled to recover if contributory fault is disregarded.

b. The percentage of the total fault allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under section 668.7. For this purpose the court may determine that two or more persons are to be treated as a single party.

3. In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party and the extent of the causal relation between the conduct and the damages claimed.

4. The court shall determine the amount of damages payable to each claimant by each other party, if any, in accordance with the findings of the court or jury.

5. If the claim is tried to a jury, the court shall give instructions and permit evidence and argument with respect to the effects of the answers to be returned to the interrogatories submitted under this section.

6. In an action brought under this chapter and tried to a jury, the court shall not discharge the jury until the court has determined that the verdict or verdicts are consistent with the total damages and percentages of fault, and if inconsistencies exist the court shall do all of the following:

a. Inform the jury of the inconsistencies.

b. Order the jury to resume deliberations to correct the inconsistencies.

c. Instruct the jury that it is at liberty to change any portion or portions of the verdicts to correct the inconsistencies.

7. When a final judgment or award is entered, any party may petition the court for a determination of the appropriate payment method of such judgment or award. If so petitioned the court may order that the payment method for all or part of the judgment or award be by structured, periodic, or other nonlump-sum

payments. However, the court shall not order a structured, periodic, or other nonlump-sum payment method if it finds that any of the following are true:

- a. The payment method would be inequitable.
- b. The payment method provides insufficient guarantees of future collectibility of the judgment or award.
- c. Payments made under the payment method could be subject to other claims, past or future, against the defendant or the defendant's insurer.

8. In an action brought pursuant to this chapter the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings on each specific item of requested or awarded damages indicating that portion of the judgment or decree awarded for past damages and that portion of the judgment or decree awarded for future damages.

87 Acts, ch 157, §5, 6 SF 482

1987 amendment to subsection 7 and new subsection 8 apply to all causes of action accruing on or after July 1, 1987; and to those accruing before July 1, 1987, which are filed after September 15, 1987; 87 Acts, ch 157, §11 SF 482

Subsection 7 amended

NEW subsection 8

668.5 Right of contribution.

1. A right of contribution exists between or among two or more persons who are liable upon the same indivisible claim for the same injury, death, or harm, whether or not judgment has been recovered against all or any of them. It may be enforced either in the original action or by a separate action brought for that purpose. The basis for contribution is each person's equitable share of the obligations, including the share of fault of a claimant, as determined in accordance with section 668.3.

2. Contribution is available to a person who enters into a settlement with the claimant only if the liability of the person against whom contribution is sought has been extinguished and only to the extent that the amount paid in settlement was reasonable.

3. Contractual or statutory rights of persons not enumerated in section 668.2 for subrogation for losses recovered in proceedings pursuant to this chapter shall not exceed that portion of the judgment or verdict specifically related to such losses, as shown by the itemization of the judgment or verdict returned under section 668.3, subsection 8, and according to the findings made pursuant to section 668.14, subsection 3, and such contractual or statutory subrogated persons shall be responsible for a pro rata share of the legal and administrative expenses incurred in obtaining the judgment or verdict.

4. Subrogation payment restrictions imposed pursuant to subsection 3 apply to settlement recoveries, but only to the extent that the settlement was reasonable.

87 Acts, ch 157, §7 SF 482

Subsections 3 and 4 apply to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, §11 SF 482

NEW subsections 3 and 4

668.13 Interest on judgments.

Interest shall be allowed on all money due on judgments and decrees on actions brought pursuant to this chapter, subject to the following:

1. Interest, except interest awarded for future damages, shall accrue from the date of the commencement of the action.

2. If the interest rate is fixed by a contract on which the judgment or decree is rendered, the interest allowed shall be at the rate expressed in the contract, not exceeding the maximum rate permitted under section 535.2.

3. Interest shall be calculated as of the date of judgment at a rate equal to the coupon issue yield equivalent, as determined by the United States secretary of the treasury, of the average accepted auction price for the last auction of fifty-two week United States treasury bills settled immediately prior to the date of the judgment. The state court administrator shall distribute notice monthly of that rate and any changes to that rate to all district courts.

4. Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment.

5. Interest shall be computed daily to the date of the payment, except as may otherwise be ordered by the court pursuant to a structured judgment under section 668.3, subsection 7.

6. Structured, periodic, or other nonlump-sum payments ordered pursuant to section 668.3, subsection 7, shall reflect interest in accordance with annuity principles.

87 Acts, ch 157, §8 SF 482

Applies to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, §11 SF 482

NEW section

668.14 Evidence of previous payment or future right of payment.

1. In an action brought pursuant to this chapter seeking damages for personal injury, the court shall permit evidence and argument as to the previous payment or future right of payment of actual economic losses incurred or to be incurred as a result of the personal injury for necessary medical care, rehabilitation services, and custodial care except to the extent that the previous payment or future right of payment is pursuant to a state or federal program or from assets of the claimant or the members of the claimant's immediate family.

2. If evidence and argument regarding previous payments or future rights of payment is permitted pursuant to subsection 1, the court shall also permit evidence and argument as to the costs to the claimant of procuring the previous payments or future rights of payment and as to any existing rights of indemnification or subrogation relating to the previous payments or future rights of payment.

3. If evidence or argument is permitted pursuant to subsection 1 or 2, the court shall, unless otherwise agreed to by all parties, instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating the effect of such evidence or argument on the verdict.

4. This section does not apply to actions governed by section 147.136.

87 Acts, ch 157, §9 SF 482

Applies to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, §11 SF 482

NEW section

CHAPTER 668A

PUNITIVE OR EXEMPLARY DAMAGES

668A.1 Punitive or exemplary damages.

1. In a trial of a claim involving the request for punitive or exemplary damages, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating all of the following:

a. Whether, by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another.

b. Whether the conduct of the defendant was directed specifically at the claimant, or at the person from which the claimant's claim is derived.

2. An award for punitive or exemplary damages shall not be made unless the answer or finding pursuant to subsection 1, paragraph "a", is affirmative. If such answer or finding is affirmative, the jury, or court if there is no jury, shall fix the amount of punitive or exemplary damages to be awarded, and such damages shall be ordered paid as follows:

a. If the answer or finding pursuant to subsection 1, paragraph "b", is affirmative, the full amount of the punitive or exemplary damages awarded shall be paid to the claimant.

b. If the answer or finding pursuant to subsection 1, paragraph "b", is negative, after payment of all applicable costs and fees, an amount not to exceed twenty-five percent of the punitive or exemplary damages awarded may be ordered paid to the claimant, with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator. Funds placed in the civil reparations trust shall be under the control and supervision of the executive council, and shall be disbursed only for purposes of indigent civil litigation programs or insurance assistance programs.

3. The mere allegation or assertion of a claim for punitive damages shall not form the basis for discovery of the wealth or ability to respond in damages on behalf of the party from whom punitive damages are claimed until such time as the claimant has established that sufficient admissible evidence exists to support a prima facie case establishing the requirements of subsection 1, paragraph "a".

87 Acts, ch 157, §10 SF 482

1987 amendment to subsection 1, paragraph a, applies to all causes of action accruing on or after July 1, 1987; and those accruing before July 1, 1987, which are filed on or after September 15, 1987; 87 Acts, ch 157, §11 SF 482
Subsection 1, paragraph a stricken and rewritten

CHAPTER 675

PATERNITY OF CHILDREN AND OBLIGATION FOR SUPPORT

675.25 Form of judgment—contents of support order—costs.

The judgment shall be for periodic amounts, equal or varying, having regard to the obligation of the father under section 675.1, as the court directs, until the child reaches majority or until the child finishes high school, if after majority. The court may order the father to pay amounts the court deems appropriate for past and future support and maintenance of the child and for the reasonable and necessary expenses incurred by or for the mother in connection with prenatal care, the birth of the child, and postnatal care of the child and the mother. The court may award the prevailing party the reasonable costs of suit, including but not limited to reasonable attorney fees.

87 Acts, ch 98, §2 SF 266

Section affirmed and reenacted effective May 4, 1987; legislative findings; 87 Acts, ch 98, §1, 2 SF 266

675.39 "Child" defined.

For the purposes of this chapter, "child" means a person less than eighteen years of age.

87 Acts, ch 98, §2 SF 266

Section affirmed and reenacted effective May 4, 1987; legislative findings; 87 Acts, ch 98, §1, 2 SF 266

CHAPTER 679A

ARBITRATION

679A.10 Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, and except for counsel fees, the arbitrators' expenses and fees and any other expenses incurred in the conduct of the arbitration shall be paid as provided in the award.

87 Acts, ch 115, §81 SF 374

Section amended

CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

692.2 Dissemination of criminal history data—fees.

1. Except in cases in which members of the department are participating in an investigation or arrest, the department and bureau may provide copies or communicate information from criminal history data only to the following:

- a. Criminal justice agencies.
- b. Other public agencies as authorized by the director of public safety.
- c. The department of human services for the purposes of section 237.8, subsection 2 and section 237A.5.
- d. The state racing commission for the purposes of section 99D.8A.
- e. The state lottery agency for purposes of section 99E.9, subsection 2.
- f. The Iowa department of public health for the purposes of screening employees and applicants for employment in substance abuse treatment programs which admit juveniles and are licensed under chapter 125.

2. The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination.

3. Persons authorized to receive information under subsection 1 shall request and may receive criminal history data only when both of the following apply:

a. The data is for official purposes in connection with prescribed duties or required pursuant to section 237.8, subsection 2 or section 237A.5.

b. The request for data is based upon name, fingerprints, or other individual identifying characteristics.

4. The provisions of this section and section 692.3 which relate to the requiring of an individually identified request prior to the dissemination or redissemination of criminal history data do not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including but not limited to, the offense and the date and place of alleged commission, individually identifying characteristics of the person to be arrested, and the court or jurisdiction issuing the warrant.

5. Notwithstanding other provisions of this section, the department and bureau may provide copies or communicate information from criminal history data to any youth service agency approved by the director of public safety. The department shall adopt rules to provide for the qualification and approval of youth service agencies to receive criminal history data.

The criminal history data to be provided by the department and bureau to authorized youth service agencies shall be limited to information on applicants for paid or voluntary positions, where those positions would place the applicant in direct contact with children.

6. The department may charge a fee to any nonlaw-enforcement agency to conduct criminal history record checks and otherwise administer this section and other sections of the Code providing access to criminal history records. The fee shall be set by the commissioner of public safety equal to the cost incurred not to exceed twenty dollars for each individual check requested.

In cases in which members of the department are participating in the investigation or arrest, or where officers of other criminal justice agencies participating in the investigation or arrest consent, the department may disseminate criminal history data and intelligence data when the dissemination complies with section 692.3.

87 Acts, ch 59, §1 HF 378
Subsection 1, NEW paragraph f

692.3 Redissemination.

1. A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate criminal history data outside the agency, received from the department or bureau, unless all of the following apply:

a. The data is for official purposes in connection with prescribed duties of a criminal justice agency.

b. The agency maintains a list of the persons receiving the data and the date and purpose of the dissemination.

c. The request for data is based upon name, fingerprints, or other individual identification characteristics.

2. Notwithstanding subsection 1, paragraph “a”, the department of human services shall redisseminate criminal history data obtained pursuant to section 692.2, subsection 1, paragraph “c”, to persons licensed or registered under chapters 237 and 237A for the purposes of section 237.8, subsection 2 and section 237A.5. Licensees and registrants under either chapter 237 or chapter 237A who receive information pursuant to this subsection shall not use the information other than for purposes of section 237.8, subsection 2 or section 237A.5. A licensee or registrant who uses the information for other purposes or who communicates the information to another except for the purposes of section 237.8, subsection 2 or section 237A.5 is guilty of an aggravated misdemeanor.

3. A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate intelligence data outside the agency, received from the department or bureau or from any other source, except as provided in subsection 1.

4. Notwithstanding subsection 1, paragraph “a”, the Iowa department of public health may redisseminate criminal history data obtained pursuant to section 692.2, subsection 1, paragraph “f”, to administrators of facilities licensed under chapter 125 which admit juveniles. Persons who receive criminal history data pursuant to this subsection shall not use this information other than for the purpose of screening employees and applicants for employment in substance abuse programs which admit juveniles and are licensed under chapter 125. A person who receives criminal history data pursuant to this subsection and who uses it for any other purpose or who communicates the information to any other person other than for the purposes permitted by this subsection is guilty of an aggravated misdemeanor.

87 Acts, ch 59, §2 HF 378
NEW subsection 4

CHAPTER 706

CONSPIRACY

706.1 Conspiracy.

1. A person commits conspiracy with another if, with the intent to promote or facilitate the commission of a crime which is an aggravated misdemeanor or felony, the person does either of the following:

a. Agrees with another that they or one or more of them will engage in conduct constituting the crime or an attempt or solicitation to commit the crime.

b. Agrees to aid another in the planning or commission of the crime or of an attempt or solicitation to commit the crime.

2. It is not necessary for the conspirator to know the identity of each and every conspirator.

3. A person shall not be convicted of conspiracy unless it is alleged and proven that at least one conspirator committed an overt act evidencing a design to accomplish the purpose of the conspiracy by criminal means.

4. A person shall not be convicted of conspiracy if the only other person or persons involved in the conspiracy were acting at the behest of or as agents of a

law enforcement agency in an investigation of the criminal activity alleged at the time of the formation of the conspiracy.

87 Acts, ch 129, §1 HF 375
Section stricken and rewritten

CHAPTER 708

ASSAULT

708.2 Penalties for assault.

1. A person who commits an assault, as defined in section 708.1, with the intent to inflict a serious injury upon another, is guilty of an aggravated misdemeanor.

2. A person who commits an assault, as defined in section 708.1, without the intent to inflict a serious injury upon another, and who causes bodily injury or disabling mental illness, is guilty of a serious misdemeanor.

3. A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor. This subsection does not apply if section 708.6 or 708.8 applies.

4. Any other assault, except as otherwise provided, is a simple misdemeanor.

87 Acts, ch 154, §8 HF 591
NEW subsection 3 and former subsection 3 renumbered as 4

708.2A Domestic abuse assault—penalty enhanced.

An assault, as defined in section 708.1 which is domestic abuse as defined in section 236.2 and which would otherwise be punishable as a simple misdemeanor under section 708.2, is a serious misdemeanor if the person who commits the assault was previously convicted of a prior domestic abuse assault within the two years prior to the date of the instant offense.

87 Acts, ch 154, §9 HF 591
NEW section

708.7 Harassment.

A person commits harassment when, with intent to intimidate, annoy or alarm another person, the person does any of the following:

1. Communicates with another by telephone, telegraph, or writing without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

2. Places any simulated explosive or simulated incendiary device in or near any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by such person.

3. Orders merchandise or services in the name of another, or to be delivered to another, without such other person's knowledge or consent.

4. Reports or causes to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or reports the alleged occurrence of a criminal act, knowing the same did not occur.

Harassment is a simple misdemeanor.

87 Acts, ch 13, §4 SF 269
Section affirmed and reenacted effective April 2, 1987; legislative findings; 87 Acts, ch 13, §1, 8 SF 269

CHAPTER 714

THEFT, FRAUD, AND RELATED OFFENSES

714.5 Library materials and equipment—unpurchased merchandise—evidence of intention.

The fact that a person has concealed library materials or equipment as defined in section 702.22 or unpurchased property of a store or other mercantile

establishment, either on the premises or outside the premises, is material evidence of intent to deprive the owner, and the finding of library materials or equipment or unpurchased property concealed upon the person or among the belongings of the person, is material evidence of intent to deprive and, if the person conceals or causes to be concealed library materials or equipment or unpurchased property, upon the person or among the belongings of another, the finding of the concealed materials, equipment or property is also material evidence of intent to deprive on the part of the person concealing the library materials, equipment or goods.

The fact that a person fails to return library materials for two months or more after the date the person agreed to return the library materials, or fails to return library equipment for one month or more after the date the person agreed to return the library equipment, is evidence of intent to deprive the owner, provided a reasonable attempt, including the mailing by restricted certified mail of notice that such material or equipment is overdue and criminal actions will be taken, has been made to reclaim the materials or equipment. Notices stating the provisions of this section and of section 808.12 with regard to library materials or equipment shall be posted in clear public view in all public libraries, in all libraries of educational, historical or charitable institutions, organizations or societies, in all museums and in all repositories of public records.

After the expiration of three days following the due date, the owner of borrowed library equipment may request the assistance of a dispute resolution center, mediation center or appropriate law enforcement agency in recovering the equipment from the borrower.

The owner of library equipment may require deposits by borrowers and in the case of late returns the owner may impose graduated penalties of up to twenty-five percent of the value of the equipment, based upon the lateness of the return.

In the case of lost library materials or equipment, arrangements may be made to make a monetary settlement.

87 Acts, ch 56, §1 HF 176
Unnumbered paragraph 6 stricken

714.16 Consumer frauds.

1. Definitions:

a. The term "*advertisement*" includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise;

b. The term "*merchandise*" includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services;

c. The term "*person*" includes any natural person or the person's legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;

d. The term "*sale*" includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit;

e. The term "*subdivided lands*" refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

f. "*Unfair practice*" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

g. "*Deception*" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

2. *a.* The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

A retailer who uses advertising for a product, other than a drug or other product claiming to have a health related benefit or use, prepared by a supplier shall not be liable under this section unless the retailer participated in the preparation of the advertisement; knew or should have known that the advertisement was deceptive, false, or misleading; refused to withdraw the product from sales upon the request of the attorney general pending a determination of whether the advertisement was deceptive, false, or misleading; refused upon the request of the attorney general to provide the name and address of the supplier; or refused to cooperate with the attorney general in an action brought against the supplier under this section.

"Material fact" as used in this subsection does not include repairs of damage to or adjustments on or replacements of parts with new parts of otherwise new merchandise if the repairs, adjustments or replacements are made to achieve compliance with factory specifications and are made before sale of the merchandise at retail and the actual cost of any labor and parts charged to or performed by a retailer for any such repairs, adjustments and parts does not exceed three hundred dollars or ten percent of the actual cost to a retailer including freight of the merchandise, whichever is less, providing that the seller posts in a conspicuous place notice that repairs, adjustments or replacements will be disclosed upon request. The exemption provided in this paragraph does not apply to the concealment, suppression or omission of a material fact if the purchaser requests disclosure of any repair, adjustment or replacement.

b. The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment or other consideration to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice rendering any obligation incurred by the buyer in connection therewith, completely void and a nullity. The rights and obligations of any contract relating to such contingent price, rebate, or payment shall be interdependent and inseverable from the rights and obligations relating to the sale, lease, or rental.

c. It is an unlawful practice for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same or substantially the same ownership, or under the same or substantially the same trade name, or to continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days. As used in this paragraph "person" includes a person who acquires an ownership interest in the business either within sixty days before the initial advertisement of the sale or at any time after the initial advertisement of the sale. In addition, a person acquiring an ownership interest shall comply with paragraph "g" if the person adds additional merchandise to the sale.

d. (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission, true and accurate copies of all road plans, plats, field notes and diagrams of water, sewage and electric power lines as they exist at the time of such filing, provided such filing shall not be required for a subdivision subject to section 306.21 or chapter 409. Each such filing shall be accompanied by a fee of fifty dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to subparagraph 1 of paragraph "d" of this subsection or section 306.21 or chapter 409, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 409 are unlawful.

e. Any violations of chapter 123 or any other provisions of law by a manufacturer, distiller, vintner, importer, or any other person participating in the distribution of alcoholic liquor or beer as defined in chapter 123.

f. A violation of a provision of sections 535C.1 through 535C.10 is an unlawful practice.

g. It is an unlawful practice for a person to acquire directly or indirectly an interest in a business which has either gone out of business or is going out of business and conduct or continue a going-out-of-business sale where additional merchandise has been added to the merchandise of the liquidating business for the purposes of the sale, unless the person provides a clear and conspicuous notice in all advertisements that merchandise has been added. The advertisement shall also state the customary retail price of the merchandise that has been added or brought in for the sale. The person acquiring the interest shall obtain a permit to hold the sale before commencing the sale. If the sale is to be held in a city which has an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the city. If the sale is to be located outside of a city or in a city which does not have an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the county in which the proposed sale is to be held. The county board of supervisors shall prescribe the procedures necessary to obtain the permit. The permit shall state the percentage of merchandise for sale that was obtained from the liquidating business and the percentage of merchandise for sale that was added from other sources. The permit or an accurate reproduction of the permit shall be clearly and conspicuously posted at all entrances to the site of the sale and at all locations where sales are consummated. A person who violates this paragraph, including any misrepresentation of the presence and the percentage of additional merchandise that had been added to that of the liquidating company, is liable for a civil penalty of not to exceed one thousand dollars for each day of each violation. The civil penalties collected shall be deposited in the general fund of the political entity which prosecutes the violation. The civil penalty is in addition to and not in lieu of any criminal penalty. A political entity enforcing this paragraph may obtain a preliminary injunction without posting a bond to enjoin a violation of paragraph "c" and this paragraph pending a hearing.

This paragraph does not prohibit a city or county from adopting an ordinance prohibiting the conducting of a going-out-of-business sale in which additional merchandise is added to the merchandise of the liquidating business for the purposes of the sale.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, the attorney general may:

a. Require such person to file on such forms as the attorney general may prescribe a statement or report in writing under oath or otherwise, as to all the

facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as the attorney general may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as the attorney general may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this section, and retain the same in the attorney general's possession until the completion of all proceedings in connection with which the same are produced.

4. a. To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred upon the attorney general by this section, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules as may be necessary, which rules shall have the force of law.

b. No information or evidence provided the attorney general by a person pursuant to subsections 3 and 4 of this section shall be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution. If a criminal prosecution under the provisions of this section is initiated in a state court against a person who has provided information pursuant to subsections 3 and 4 of this section, the state shall have the burden of proof that the information so provided was not used in any manner to further the criminal investigation or prosecution.

c. In any civil action brought pursuant to this chapter, the attorney general shall have the right to require any defendant to give testimony, and no criminal prosecution based upon transactions or acts about which the defendant is questioned and required to give testimony shall thereafter be brought against such defendant.

5. Service by the attorney general of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

a. Personal service thereof without this state; or

b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or

c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or

d. Such service as a district court may direct in lieu of personal service within this state.

6. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereof, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

c. Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

7. A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the

attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for restitution or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for restitution may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

8. When a receiver is appointed by the court pursuant to this section, the receiver shall have the power to sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this section, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this section, the provisions of this section shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. A civil action pursuant to this section may be commenced in the county in which the person against whom it is brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction occurred, or where one or more of the victims reside.

11. In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

12. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

13. The attorney general or the designee of the attorney general is deemed to be a regulatory agency under chapter 692 for the purpose of receiving criminal intelligence data relating to violations of this section.

14. This section does not apply to the newspaper, magazine, publication, or other print media in which the advertisement appears, or to the radio station, television station, or other electronic media which disseminates the advertisement if the newspaper, magazine, publication, radio station, television station, or other print or electronic media has no knowledge of the fraudulent intent, design, or purpose of the advertiser at the time the advertisement is accepted; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

87 Acts, ch 164, §1-7 HF 416

Subsection 1, NEW paragraphs f and g

Subsection 2, paragraph a, unnumbered paragraph 1 amended

Subsection 7 amended

NEW subsection 10, former subsections 10 and 11 renumbered as 11 and 12, and former subsection 12 renumbered as

14

Subsection 11 amended

NEW subsection 13

Subsection 14 amended

CHAPTER 715

FALSE USE OF A FINANCIAL INSTRUMENT

Repealed by 87 Acts, ch 150, §8. HF 574

See ch 715A.

CHAPTER 715A

FORGERY AND RELATED FRAUDULENT CRIMINAL ACTS

715A.1 Definitions.

1. As used in this chapter the term "*writing*" includes printing or any other method of recording information, and includes money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

2. As used in this chapter the term "*credit card*" means a writing purporting to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer and includes a debit card or access device used to engage in an electronic transfer of funds through a satellite terminal as defined in section 527.2, subsection 1.

87 Acts, ch 150, §1 HF 574

NEW section

715A.2 Forgery.

1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:

a. Alters a writing of another without the other's permission.

b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence

other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.

c. Utters a writing which the person knows to be forged in a manner specified in paragraph "a" or "b".

2. a. Forgery is a class "D" felony if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by the government, or part of an issue of stock, bonds, or other instruments representing interests in or claims against any property or enterprise, or a check, draft, or other writing which ostensibly evidences an obligation of the person who has purportedly executed it or authorized its execution.

b. Forgery is an aggravated misdemeanor if the writing is or purports to be a will, deed, contract, release, commercial instrument, or any other writing or other document evidencing, creating, transferring, altering, terminating, or otherwise affecting legal relations.

87 Acts, ch 150, §2 HF 574
NEW section

715A.3 Simulating objects of antiquity or rarity.

A person commits a serious misdemeanor if, with intent to defraud anyone or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person makes, alters, or utters any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

87 Acts, ch 150, §3 HF 574
NEW section

715A.4 Fraudulent destruction, removal, or concealment of recordable instruments.

A person commits an aggravated misdemeanor if, with the intent to deceive or injure anyone, the person destroys, removes, or conceals a will, deed, mortgage, security instrument, or other writing for which the law provides public recording.

87 Acts, ch 150, §4 HF 574
NEW section

715A.5 Tampering with records.

A person commits an aggravated misdemeanor if, knowing that the person has no privilege to do so, the person falsifies, destroys, removes, or conceals a writing or record, with the intent to deceive or injure anyone or to conceal any wrongdoing.

87 Acts, ch 150, §5 HF 574
NEW section

715A.6 Credit cards.

1. A person commits a public offense by using a credit card for the purpose of obtaining property or services with knowledge of any of the following:

- a. The credit card is stolen or forged.
- b. The credit card has been revoked or canceled.
- c. For any other reason the use of the credit card is unauthorized.

It is an affirmative defense to prosecution under paragraph "c" if the person proves by a preponderance of the evidence that the person had the intent and ability to meet all obligations to the issuer arising out of the use of the credit card.

2. An offense under this section is a class "D" felony if the value of the property or services secured or sought to be secured by means of the credit card is greater than five hundred dollars, otherwise the offense is an aggravated misdemeanor.

87 Acts, ch 150, §6 HF 574
NEW section

715A.7 Filing multiple counts in one information, indictment, or complaint.

A single information, indictment, or complaint charging false use of a financial instrument* may allege more than one such violation against a person. The

multiple charges shall be set out in separate counts, and the accused person shall be acquitted or convicted upon each count by a separate verdict. A convicted person shall be sentenced upon each verdict of guilty. The court may consider separate verdicts of guilty returned at the same time as one offense for the purpose of sentencing.

87 Acts, ch 150, §7 HF 574

*"A violation of a provision of this chapter" probably was intended
NEW section

CHAPTER 715B

PROTECTION OF BUYERS OF FINE ART AND VISUAL ART MULTIPLES

715B.1 Definitions.

As used in this chapter:

1. "*Artist*" means the creator of a work of fine art or, in the case of multiples, the person who conceived or created the image which is contained in or which constitutes the master from which the individual print was made.

2. "*Art merchant*" means a person who is in the business of dealing, exclusively or nonexclusively, in works of fine art or multiples, or a person who by the person's occupation claims or impliedly claims to have knowledge or skill peculiar to such works, or to whom such knowledge or skill may be attributed by the person's employment of an agent or other intermediary who by occupation claims or impliedly claims to have such knowledge or skill. The term "*art merchant*" includes an auctioneer who sells such works at public auction, and except for multiples, includes persons not otherwise defined or treated as art merchants in this chapter who are consignors or principals of auctioneers.

3. "*Author*" or "*authorship*" refers to the creator of a work of fine art or multiple or to the period, culture, source, or origin, as the case may be, with which the creation of the work is identified in the description of the work.

4. "*Counterfeit*" means a work of fine art or multiple made, altered, or copied, with or without intent to deceive, in such a manner that it appears or is claimed to have an authorship which it does not in fact possess.

5. "*Certificate of authenticity*" means a written statement by an art merchant confirming, approving, or attesting to the authorship of a work of fine art or multiple, which is capable of being used to the advantage or disadvantage of some person.

6. "*Fine art*" means a painting, sculpture, drawing, work of graphic art, or print, but not multiples.

7. "*Limited edition*" means works of art produced from a master, all of which are the same image and bear numbers or other markings to denote a limited production to a stated maximum number of multiples, or which are otherwise held out as limited to a maximum number of multiples.

8. "*Master*" includes a printing plate, stone, block, screen, photographic negative, or other like material which contains an image used to produce visual art objects in multiples.

9. "*Print*" means a multiple produced by, but not limited to, such processes as engraving, etching, woodcutting, lithography, and serigraphy, a multiple produced or developed from a photographic negative, or a multiple produced or developed by any combination of such processes.

10. "*Proof*" means a multiple which is the same as, and which is produced from the same master as the multiples in a limited edition, but which, whether so designated or not, is set aside from and is in addition to the limited edition to which it relates.

11. "*Signed*" means autographed by the artist's own hand, and not by mechanical means of reproduction, and if a multiple, after the multiple was produced, whether or not the master was signed.

12. "*Visual art multiple*" or "*multiple*" means a print, photograph, positive or negative, or similar art object produced in more than one copy and sold, offered for sale, or consigned in, into, or from this state for an amount in excess of one hundred dollars exclusive of any frame. The term includes a page or sheet taken from a book or magazine and offered for sale or sold as a visual art object, but excludes a book or magazine.

13. "*Written instrument*" means a written or printed agreement, bill of sale, invoice, certificate of authenticity, catalogue, or any other written or printed note, memorandum, or label describing the work of fine art or multiple which is to be sold, exchanged, or consigned by an art merchant.

87 Acts, ch 49, §1 SF 428
NEW section

715B.2 Express warranties.

1. If an art merchant sells or exchanges a work of fine art or multiple and furnishes to a buyer of the work who is not an art merchant a certificate of authenticity or any similar written instrument presumed to be part of the basis of the bargain, the art merchant creates an express warranty for the material facts stated as of the date of the sale or exchange.

2. Except as provided in subsection 4, an express warranty shall not be negated or limited; however, in construing the degree of warranty, due regard shall be given the terminology used and the meaning accorded the terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place.

3. Language used in a certificate of authenticity or similar written instrument, stating that:

a. The work is by a named author or has a named authorship, without any limiting words, means unequivocally, that the work is by such named author or has such named authorship.

b. The work is "*attributed to a named author*" means a work of the period of the author, attributed to the author, but not with certainty by the author.

c. The work is of the "*school of a named author*" means a work of the period of the author, by a pupil or close follower of the author, but not by the author.

4. An express warranty and any disclaimer intended to negate or limit the warranty shall be construed wherever reasonable as consistent with each other but subject to the provisions of section 554.2202 on parol and extrinsic evidence. However, the negation or limitation is inoperative to the extent that the negation or limitation is unreasonable or that such construction is unreasonable. A negation or limitation is unreasonable if:

a. The disclaimer is not conspicuous, written, and apart from the warranty, in words which clearly and specifically inform the buyer that the seller assumes no risk, liability, or responsibility for the material facts stated concerning the work of fine art. Words of general disclaimer are not sufficient to negate or limit an express warranty.

b. The work of fine art is proved to be a counterfeit and this was not clearly indicated in the description of the work.

c. The information provided is proved to be, as of the date of sale or exchange, false, mistaken, or erroneous.

5. This section shall apply to an art merchant selling or exchanging a multiple who furnishes the buyer with the name of the artist and any other information

including, but not limited to, whether the multiple is a limited edition, a proof, or signed. The warranty provided under this subsection shall include sales to buyers who are art merchants.

87 Acts, ch 49, §2 SF 428
NEW section

715B.3 Falsifying certificates of authenticity or false representation—penalty.

A person who makes, alters, or issues a certificate of authenticity or any similar written instrument for a work of fine art or multiple attesting to material facts about the work which are not true, or who makes representations regarding a work of fine art or a multiple attesting to material facts about the work which are not true, with intent to defraud, deceive, or injure another is guilty, upon conviction, of an aggravated misdemeanor.

87 Acts, ch 49, §3 SF 428
NEW section

715B.4 Remedies to buyer.

1. An art merchant who sells a work of fine art or a multiple to a buyer under a warranty attesting to facts about the work which are not true is liable to the buyer to whom the work was sold.

a. If the warranty was untrue through no fault of the art merchant, the merchant's liability is the consideration paid by the buyer upon return of the work in substantially the same condition in which it was received by the buyer.

b. If the warranty is untrue and the buyer is able to establish that the art merchant failed to make reasonable inquiries according to the custom and the usage of the trade to confirm the warranted facts about the work, or that the warranted facts would have been found to be untrue if reasonable inquiries had been made, the merchant's liability is the consideration paid by the buyer with interest from the time of the payment at the rate prescribed by section 535.3 upon the return of the work in substantially the same condition in which it was received by the buyer.

c. If the warranty is untrue and the buyer is able to establish that the art merchant knowingly provided false information on the warranty or willfully and falsely disclaimed knowledge of information relating to the warranty, the merchant is liable to the buyer in an amount equal to three times the amount provided in paragraph "b".

This remedy shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the buyer.

2. In an action to enforce this section, the court may allow a prevailing buyer the costs of the action together with reasonable attorneys' and expert witnesses' fees. If the court determines that an action to enforce this section was brought in bad faith, the court may allow those expenses to the art merchant that it deems appropriate.

3. An action to enforce any liability under this section shall be brought within the time period prescribed for such actions under section 614.1.

87 Acts, ch 49, §4 SF 428
NEW section

CHAPTER 717

INJURY TO ANIMALS

717.2 Cruelty to animals.

A person who impounds or confines, in any place, a domestic animal or fowl, or an animal or fowl subject to section 109.60, or dog or cat, and fails to supply the animal during confinement with a sufficient quantity of food, and water, or who

fails to provide a dog or cat with adequate shelter, or who tortures, torments, deprives of necessary sustenance, mutilates, overdrives, overloads, drives when overloaded, beats, or kills an animal by any means which cause unjustified pain, distress, or suffering, whether intentionally or negligently, commits the offense of cruelty to animals.

A person who commits the offense of cruelty to animals is guilty of a simple misdemeanor. A person who intentionally commits the offense of cruelty to animals which results in serious injury to or the death of an animal is guilty of a serious misdemeanor.

87 Acts, ch 179, §1 SF 17
Section amended

CHAPTER 721

OFFICIAL MISCONDUCT

721.2 Nonfelonious misconduct in office.

Any public officer or employee, or any person acting under color of such office or employment, who knowingly does any of the following, commits a serious misdemeanor:

1. Makes any contract which contemplates an expenditure known by the person to be in excess of that authorized by law.
2. Fails to report to the proper officer the receipt or expenditure of public moneys, together with the proper vouchers therefor, when such is required of the person by law.
3. Requests, demands, or receives from another for performing any service or duty which is required of the person by law, or which is performed as an incident of the person's office or employment, any compensation other than the fee, if any, which the person is authorized by law to receive for such performance.
4. By color of the person's office and in excess of the authority conferred on the person by that office, requires any person to do anything or to refrain from doing any lawful thing.
5. Uses or permits any other person to use the property owned by the state or any subdivision or agency of the state for any private purpose and for personal gain, to the detriment of the state or any subdivision thereof.
6. Fails to perform any duty required of the person by law.
7. Demands that any public employee contribute or pay anything of value, either directly or indirectly, to any person, organization or fund, or in any way coerces or attempts to coerce any public employee to make any such contributions or payments, except where such contributions or payments are expressly required by law.
8. Permits persons to use the property owned by the state or a subdivision or agency of the state to operate a political phone bank for any of the following purposes:
 - a. To poll voters on their preferences for candidates or ballot measures at an election; however, this paragraph does not apply to authorized research at an educational institution.
 - b. To solicit funds for a political candidate or organization.
 - c. To urge support for a candidate or ballot measure to voters.

87 Acts, ch 221, §35 HF 600
NEW subsection 8

CHAPTER 722

BRIBERY AND CORRUPTION

722.1 Bribery.

A person who offers, promises, or gives anything of value or any benefit to a person who is serving or has been elected, selected, appointed, employed, or

otherwise engaged to serve in a public capacity, including a public officer or employee, a referee, juror, or jury panel member, or a witness in a judicial or arbitration hearing or any official inquiry, or a member of a board of arbitration, pursuant to an agreement or arrangement or with the understanding that the promise or thing of value or benefit will influence the act, vote, opinion, judgment, decision, or exercise of discretion of the person with respect to the person's services in that capacity commits a class "D" felony. In addition, a person convicted under this section is disqualified from holding public office under the laws of this state.

87 Acts, ch 213, §9 SF 480
Effective June 5, 1987
Section stricken and rewritten

722.2 Accepting bribe.

A person who is serving or has been elected, selected, appointed, employed, or otherwise engaged to serve in a public capacity, including a public officer or employee, a referee, juror, or jury panel member, or a witness in a judicial or arbitration hearing or any official inquiry, or a member of a board of arbitration who solicits or knowingly accepts or receives a promise or anything of value or a benefit given pursuant to an understanding or arrangement that the promise or thing of value or benefit will influence the act, vote, opinion, judgment, decision, or exercise of discretion of the person with respect to the person's services in that capacity commits a class "C" felony. In addition, a person convicted under this section is disqualified from holding public office under the laws of this state.

87 Acts, ch 213, §10 SF 480
Effective June 5, 1987
Section stricken and rewritten

CHAPTER 724

WEAPONS

724.4 Carrying weapons.

A person who goes armed with a dangerous weapon concealed on or about the person, or who, within the limits of any city, goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor, provided that this section shall not apply to any of the following:

1. A person who goes armed with a dangerous weapon in the person's own dwelling or place of business, or on land owned or possessed by the person.
2. Any peace officer, when the officer's duties require the person to carry such weapons.
3. Any member of the armed forces of the United States or of the national guard or person in the service of the United States, when the weapons are carried in connection with the person's duties as such.
4. A correctional officer, when the officer's duties require, serving under the authority of the Iowa department of corrections.
5. Any person who for any lawful purpose carries an unloaded pistol, revolver, or other dangerous weapon inside a closed and fastened container or securely wrapped package which is too large to be concealed on the person.
6. Any person who for any lawful purpose carries or transports an unloaded pistol or revolver in any vehicle inside a closed and fastened container or securely wrapped package which is too large to be concealed on the person or inside a cargo or luggage compartment where the pistol or revolver will not be readily accessible to any person riding in the vehicle or common carrier.
7. Any person while the person is lawfully engaged in target practice on a range designed for that purpose or while actually engaged in lawful hunting.

8. Any person who has in the person's possession and who displays to any peace officer on demand a valid permit to carry weapons which has been issued to the person, and whose conduct is within the limits of that permit. No person shall be convicted of a violation of this section if the person produces at the person's trial a permit to carry weapons which was valid at the time of the alleged offense and which would have brought the person's conduct within this exception if the permit had been produced at the time of the alleged offense.

9. A law enforcement officer from another state when the officer's duties require the officer to carry the weapon and the officer is in this state for any of the following reasons:

- a. The extradition or other lawful removal of a prisoner from this state.
- b. Pursuit of a suspect in compliance with chapter 806.
- c. Activities in the capacity of a law enforcement officer with the knowledge and consent of the chief of police of the city or the sheriff of the county in which the activities occur or of the director of public safety.

87 Acts, ch 13, §5 SF 269

Subsection 6 affirmed and reenacted effective April 2, 1987; legislative findings; 87 Acts, ch 13, §1, 8 SF 269

CHAPTER 725

VICE

725.3 Pandering.

1. A person who persuades, arranges, coerces, or otherwise causes another, not a minor, to become a prostitute or to return to the practice of prostitution after having abandoned it, or keeps or maintains any premises for the purposes of prostitution or takes a share in the income from such premises knowing the character and content of such income, commits a class "D" felony.

2. A person who persuades, arranges, coerces, or otherwise causes a minor to become a prostitute or to return to the practice of prostitution after having abandoned it, or keeps or maintains any premises for the purpose of prostitution involving minors or knowingly shares in the income from such premises knowing the character and content of such income, commits a class "C" felony.

87 Acts, ch 115, §82 SF 374
Section amended

CHAPTER 726

PROTECTION OF THE FAMILY

726.8 Wanton neglect or nonsupport of a dependent adult.

1. A caretaker commits wanton neglect of a dependent adult if the caretaker knowingly acts in a manner likely to be injurious to the physical, mental, or emotional welfare of a dependent adult. Wanton neglect of a dependent adult is a serious misdemeanor.

2. A person who has legal responsibility either through contract or court order for support of a dependent adult and who fails or refuses to provide support commits nonsupport. Nonsupport is a class "D" felony.

3. A person alleged to have committed wanton neglect or nonsupport of a dependent adult shall be charged with the respective offense unless a charge may be brought based upon a more serious offense, in which case the charge of the more serious offense shall supersede the less serious charge.

4. For the purposes of this section, “*dependent adult*” means a dependent adult as defined in section 235B.1, subsection 3, and “*caretaker*” means a caretaker as defined in section 235B.1, subsection 4.

87 Acts, ch 182, §10 HF 660
NEW section

CHAPTER 727

HEALTH, SAFETY AND WELFARE

727.5 Obstruction of emergency communications.

An emergency communication is any telephone call or radio transmission to a fire department or police department for aid, or a call or transmission for medical aid or ambulance service, when human life or property is in jeopardy and the prompt summoning of aid is essential. A person who fails to relinquish a telephone or telephone line which the person is using when informed that the phone or line is needed for an emergency call or knowingly and intentionally obstructs or interferes with an emergency call or transmission commits a simple misdemeanor.

87 Acts, ch 12, §1 HF 314
Section amended

CHAPTER 729

INFRINGEMENT OF CIVIL RIGHTS

729.4 Fair employment practices.

1. Every person in this state is entitled to the opportunity for employment on equal terms with every other person. A person or employer shall not discriminate in the employment of individuals because of race, religion, color, sex, national origin, or ancestry. However, as to employment an individual must be qualified to perform the services or work required.

2. A labor union or organization or an officer thereof shall not discriminate against any person as to membership therein because of race, religion, color, sex, national origin or ancestry.

3. Any person, employer, labor union or organization or officer of a labor union or organization convicted of a violation of subsection 1 or 2 shall be guilty of a simple misdemeanor.

87 Acts, ch 74, §1 HF 507
Subsections 1 and 2 amended

CHAPTER 730

EMPLOYER-EMPLOYEE OFFENSES

730.5 Drug testing of employees or applicants regulated.

1. As used in this section, “*drug test*” means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual.

2. Except as provided in subsection 7, an employer shall not require or request employees or applicants for employment to submit to a drug test as a condition of employment, preemployment, promotion, or change in status of employment. An employer shall not request, require, or conduct random or blanket drug testing of employees. However, this section does not apply to preemployment drug tests authorized for peace officers or correctional officers of the state, or to drug tests

required under federal statutes, or to drug tests conducted pursuant to a nuclear regulatory commission policy statement, or to drug tests conducted to determine if an employee is ineligible to receive workers' compensation under section 85.16, subsection 2.

3. This section does not prohibit an employer from requiring a specific employee to submit to a drug test if all of the following conditions are met:

a. The employer has probable cause to believe that an employee's faculties are impaired on the job.

b. The employee is in a position where such impairment presents a danger to the safety of the employee, another employee, a member of the public, or the property of the employer, or when impairment due to the effects of a controlled substance is a violation of a known rule of the employer.

c. The test sample withdrawn from the employee is analyzed by a laboratory or testing facility that has been approved under rules adopted by the department of public health.

d. If a test is conducted and the results indicate that the employee is under the influence of alcohol or a controlled substance or indicate the presence of alcohol or a controlled substance, a second test using an alternative method of analysis shall be conducted. When possible and practical, the second test shall use a portion of the same test sample withdrawn from the employee for use in the first test.

e. An employee shall be accorded a reasonable opportunity to rebut or explain the results of a drug test.

f. The employer shall provide substance abuse evaluation, and treatment if recommended by the evaluation, with costs apportioned as provided under the employee benefit plan or at employer expense, if there is no employee benefit plan, the first time an employee's drug test indicates the presence of alcohol or a controlled substance. An employer shall take no disciplinary action against an employee due to the employee's drug involvement the first time the employee's drug test indicates the presence of alcohol or a controlled substance if the employee undergoes a substance abuse evaluation, and if the employee successfully completes substance abuse treatment if treatment is recommended by the evaluation. However, if an employee fails to undergo substance abuse evaluation when required under the results of a drug test, or fails to successfully complete substance abuse treatment when recommended by an evaluation, the employee may be disciplined up to and including discharge. The substance abuse evaluation and treatment provided by the employer shall take place under a program approved by the department of public health or accredited by the joint commission on accreditation of hospitals.

4. In conducting those tests designed to identify the presence of chemical substances in the body, the employer shall ensure to the extent feasible that the tests only measure and that the records of the tests only show or make use of information regarding chemical substances in the body which are likely to affect the ability of the employee to perform safely the employee's duties while on the job.

5. This section does not restrict an employer's ability to prohibit the use of alcohol or controlled substances during work hours or to discipline employees for being under the influence of alcohol or controlled substances during work hours.

6. This section does not prevent an employer from conducting medical screening in order to monitor exposure to toxic or other unhealthy substances encountered in the workplace or in the performance of their job responsibilities. Any such screening must be limited to the specific substances required to be monitored.

7. A drug test conducted as a part of a physical examination performed as a part of a preemployment physical or as a part of a regularly scheduled physical is only permissible under the following circumstances:

a. For a preemployment physical, the employer shall include notice that a drug test will be part of a preemployment physical in any notice or advertisement

soliciting applicants for employment or in the application for employment, and an applicant for employment shall be personally informed of the requirement for a drug test at the first interview.

b. For a regularly scheduled physical, the employer shall give notice that a drug test will be part of the physical at least thirty days prior to the date the physical is scheduled.

Drug testing conducted under this subsection shall conform to the requirements of subsection 3, paragraphs "c", "d", "e", and "f"; however, paragraph "f" shall not apply to drug tests conducted as a part of a preemployment physical.

8. An employer shall protect the confidentiality of the results of any drug test conducted on an employee. The results of the test may be recorded in the employee's personnel records; however, if an employee whose test indicated the employee was under the influence of alcohol or a controlled substance or indicated the presence of a controlled substance has undergone substance abuse evaluation and, when treatment is indicated under the substance abuse evaluation, successfully completed treatment for substance abuse, the employee's personnel records shall be expunged of any reference to the test or its results when the employee leaves employment.

9. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee or applicant for employment for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or applicant for employment, the county attorney, or the attorney general.

In an action brought under this subsection alleging that an employer has required or requested a drug test in violation of this section, the employer has the burden of proving that the requirements of this section were met.

10. An employee shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer in the amount of any loss of wages and benefits arising out of the discrimination and shall be restored to the employee's previous position of employment.

11. A person who violates this section is, upon conviction, guilty of a simple misdemeanor.

87 Acts, ch 208, §1 HF 469
NEW section

CHAPTER 805

CITATIONS IN LIEU OF ARREST

805.1 When police citation may issue.

1. Except for an offense for which an accused would not be eligible for bail under section 811.1, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest without a warrant or, if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

2. The citation procedure for traffic and other violations designated as scheduled violations is governed by sections 805.6 through 805.15.

3. a. State and local law enforcement agencies in the state of Iowa may cooperate to formulate uniform guidelines that will provide for the maximum possible use of citations in lieu of arrest and in lieu of continued custody for offenses for which citations are authorized. These guidelines shall be submitted to the Iowa law enforcement academy council for review. The Iowa law enforcement academy council shall then submit recommendations to the general assembly no later than January 1, 1984.

b. Factors to be considered by the agencies in formulating the guidelines relating to the issuance of citations for simple misdemeanors not governed by subsection 2, shall include but shall not be limited to all of the following:

(1) Whether a person refuses or fails to produce means for a satisfactory identification.

(2) Whether a person refuses to sign the citation.

(3) Whether detention appears reasonably necessary in order to halt a continuing offense or disturbance or to prevent harm to a person or persons.

(4) Whether a person appears to be under the influence of intoxicants or drugs and no one is available to take custody of the person and be responsible for the person's safety.

(5) Whether a person has insufficient ties to the jurisdiction to assure that the person will appear or it reasonably appears that there is a substantial likelihood that the person will refuse to appear in response to a citation.

(6) Whether a person has previously failed to appear in response to a citation or after release on pretrial release guidelines.

c. Additional factors to be considered in the formulation of guidelines relating to the issuance of citations for other offenses for which citations are authorized shall include but shall not be limited to all of the following concerning the person:

(1) Place and length of residence.

(2) Family relationships.

(3) References.

(4) Present and past employment.

(5) Criminal record.

(6) Nature and circumstances of the alleged offense.

(7) Other facts relevant to the likelihood of the person's response to a citation.

4. The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search. The issuance of a citation in lieu of arrest shall be deemed an arrest for the purpose of the speedy indictment requirements of R.Cr.P. section 27, subsection 2, paragraph "a", Ia. Ct. Rules, 2d ed.

5. Even if a citation is issued, the officer may take the cited person to an appropriate medical facility if it reasonably appears that the person needs care.

6. When a citation is not issued for an offense for which a citation is authorized, the arrested person may be released pending initial appearance on bail or on other conditions determined by pretrial release guidelines. When an arrested person furnishes bail, the officer then in charge of the place of detention shall secure it in safekeeping and shall see that it is forwarded to the office of the clerk of court during the clerk's next regular business day.

7. When the offense is one for which a citation is not authorized, the person does not qualify for release under pretrial release guidelines and the person cannot be released under a bond schedule, the person may be released on bail or otherwise only after initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure.

8. A peace officer shall issue a citation in lieu of arrest to a person under eighteen years of age accused of violating* a simple misdemeanor under the

provisions of chapter 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G, and shall not detain or confine the person in a facility regulated under chapter 356 or 356A.

87 Acts, ch 149, §6 SF 522
 **"Committing" probably intended
 NEW subsection 8

805.8 Scheduled violations.

1. *Application.* Except as otherwise indicated, violations of sections of the Code specified in this section are scheduled violations, and the scheduled fine for each of those violations is as provided in this section, whether the violation is of state law or of a county or city ordinance. The criminal penalty surcharge required by section 911.2 shall be added to the scheduled fine.

2. *Traffic violations.*

a. For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars: However, violations charged by a city upon simple notice of a fine instead of a uniform citation and complaint as permitted by section 321.236, subsection 1, paragraph "a", are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 111.38 or 321.362 the scheduled fine is ten dollars.

b. For registration violations under sections 321.32, 321.34, 321.37, 321.38, and 321.41 the scheduled fine is five dollars.

c. For improperly used or nonused, or defective or improper equipment, other than brakes, driving lights and brakelights, under sections 321.317, 321.387, 321.388, 321.389, 321.390, 321.391, 321.392, 321.393, 321.422, 321.432, 321.436, 321.437, 321.438, subsection 1 or 3, 321.439, 321.440, 321.441, 321.442, 321.444, and 321.445, the scheduled fine is ten dollars.

d. For improper equipment under section 321.438, subsection 2, the scheduled fine is fifteen dollars.

e. For improperly used or nonused or defective or improper equipment under sections 321.383, 321.384, 321.385, 321.386, 321.398, 321.402, 321.403, 321.404, 321.409, 321.419, 321.420, 321.423, 321.430, and 321.433, the scheduled fine is twenty dollars.

f. For violations of a restricted license under sections 321.180, 321.193 and 321.194, the scheduled fine is twenty dollars.

g. (1) For excessive speed violations when not more than five miles per hour in excess of the limit under sections 111.36, 321.236, subsections 5 and 11, 321.285, 321.286 and 321.287, the scheduled fine is ten dollars.

(2) Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

(3) For excessive speed violations when in excess of the limit under sections 111.36, 321.236, subsections 5 and 11, 321.285, 321.286, and 321.287 by five or less miles per hour the fine is ten dollars, by more than five and not more than ten miles per hour the fine is twenty dollars, by more than ten and not more than fifteen miles per hour the fine is thirty dollars, by more than fifteen and not more than twenty miles per hour the fine is forty dollars, and by more than twenty miles per hour the fine is forty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

(4) Notwithstanding subparagraphs (1) and (3), for excessive speed violations in speed zones greater than fifty-five miles per hour when in excess of the limit by five miles per hour or less the fine is ten dollars, by more than five and not more than ten miles per hour the fine is twenty dollars, by more than ten and not more than fifteen miles per hour the fine is forty dollars, by more than fifteen and not more than twenty miles per hour the fine is sixty dollars, and by more than twenty miles per hour the fine is sixty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

(5) Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in a subparagraph of this paragraph "g".

h. For operating, passing, turning and standing violations under sections 321.236, subsections 3, 4, 9 and 12, 321.275, 321.295, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, 321.305, 321.306, 321.311, 321.312, 321.314, 321.315, 321.316, 321.318, 321.323, 321.340, 321.344, 321.353, 321.354, 321.363, 321.365, 321.366, 321.368, 321.382 and 321.395, the scheduled fine is fifteen dollars.

i. For violations involving failures to yield or to observe pedestrians and other vehicles under sections 321.257, subsection 2, 321.288, 321.298, 321.300, 321.307, 321.308, 321.313, 321.319, 321.320, 321.321, 321.329, 321.333, and 321.367, the scheduled fine is twenty dollars.

j. For violations by pedestrians and bicyclists under sections 321.234, subsections 3 and 4, 321.236, subsection 10, 321.257, subsection 2, 321.325, 321.326, 321.328, 321.331, 321.332, 321.397 and 321.434, the scheduled fine is ten dollars.

k. For violations by operators of school buses and emergency vehicles, and for violations by other motor vehicle operators when in vicinity, under sections 321.231, 321.324, 321.372 and 321.377, the scheduled fine is twenty-five dollars: However, excessive speed by a school bus in excess of ten miles over the limit is not a scheduled violation.

l. For violations of traffic signs and signals, and for failure to obey an officer under sections 321.229, 321.236, subsections 2 and 6, 321.256, 321.257, subsection 2, 321.294, 321.304, subsection 3, 321.322, 321.341, 321.342, 321.343 and 321.415, the scheduled fine is twenty dollars.

m. For height, weight, length, width and load violations and towed vehicle violations under sections 321.309, 321.310, 321.381, 321.394, 321.437, 321.454, 321.455, 321.456, 321.457, 321.458, 321.461, and 321.462, the scheduled fine is twenty-five dollars. For weight violations under sections 321.459 and 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

n. For violation of display of identification required by section 326.22 and violation of trip permits as prescribed by section 326.23, the scheduled fine is twenty dollars.

a. For violation of registration provisions under section 321.17; violation of intrastate hauling on foreign registration under section 321.54; improper operation or failure to register under section 321.55; and violation of requirement for display of registration or plates under section 321.98, the scheduled fine is twenty dollars.

For failure to comply with administrative rules adopted under section 325.3, 327.3 or 327A.17 which require that evidence of intrastate authority be carried and displayed upon request, that a valid lease be carried and displayed upon request, or that a valid fee receipt be carried and displayed upon request, the scheduled fine is twenty-five dollars.

For failure to have proper carrier identification markings under section 325.31, 327.19, 327A.8 or 327B.1, the scheduled fine is fifteen dollars.

For failure to have proper evidence of interstate authority carried or displayed under section 327B.1 and for failure to register, carry, or display evidence that interstate authority is not required under section 327B.1, the scheduled fine is one hundred dollars.

For violations of rules adopted by the department under section 321.449, the scheduled fine is twenty-five dollars.

For violation of section 321.364 or rules adopted under section 321.450, the scheduled fine is fifty dollars.

p. Reserved.

q. Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the

provisions, procedures and exceptions contained in sections 805.6 to 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one hundred dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one hundred dollars:

(1) Shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information,

(2) but otherwise, shall be chargeable only upon indictment or county attorney's information. In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one hundred dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

r. For failure to have a valid license or permit for operating a motor vehicle on the highways of this state, the scheduled fine is fifteen dollars.

s. For a violation of section 601E.6, regulating the use of handicapped parking spaces, the scheduled fine is fifteen dollars.

t. For failing to secure a child with a child restraint system, safety belt, or harness in violation of section 321.446, the scheduled fine is ten dollars.

3. *Violations of navigation laws.*

a. For violations of registration, inspections, identification, and record provisions under sections 106.5, 106.35, 106.37, and for unused or improper or defective lights and warning devices under section 106.9, subsections 3, 4, 5, 9, and 10, the scheduled fine is ten dollars.

b. For violations of registration, identification, and record provisions under sections 106.4 and 106.10 and for unused or improper or defective equipment under section 106.9, subsections 2, 6, 7, 8, and 13, and section 106.11 and for operation violations under sections 106.26, 106.31 and 106.33, the scheduled fine is twenty dollars.

c. For operating violations under sections 106.12, 106.15, subsection 1, 106.24, and 106.34, the scheduled fine is twenty-five dollars. However, a violation of section 106.12, subsection 2, is not a scheduled violation.

d. For violations of use, location and storage of vessels, devices and structures under sections 106.27, 106.28 and 106.32, the scheduled fine is fifteen dollars.

e. For violations of all subdivision ordinances under section 106.17, subsection 2, except those relating to matters subject to regulation by authority of subsection 5 of section 106.31, the scheduled fine is the same as prescribed for similar violations of state law. For violations of subdivision ordinances for which there is no comparable state law the scheduled fine is ten dollars.

4. *Snowmobile violations.*

a. For registration and identification violations under sections 321G.3 and 321G.5, the scheduled fine is five dollars.

b. For operating violations under sections 321G.9, subsections 1, 2, 3, 4, 5 and 7, 321G.11, and 321G.13, subsections 4 and 9, the scheduled fine is twenty dollars.

c. For improper or defective equipment under section 321G.12, the scheduled fine is ten dollars.

d. For violations of section 321G.19, the scheduled fine is fifteen dollars.

5. *Fish and game law violations.*

a. For violations of section 110.1, the scheduled fine is twenty dollars: However, engaging without a license in any activity the license fee for which is greater than twenty dollars is not a scheduled violation.

b. For violations of sections 109.54, 109.80, first paragraph, 109.82, 109.91, 109.122, 109.123 and 110.19, the scheduled fine is twenty dollars.

c. For hunting or taking a raccoon during a closed season in violation of sections 109.38 and 109.39 or administrative orders or rules adopted under those sections, the scheduled fine is fifty dollars.

6. *Violations relating to the use and misuse of parks and preserves.*

a. For violations under sections 111.39, 111.45 and 111.50, the scheduled fine is ten dollars.

b. For violations under sections 111.40, 111.43, 111.46 and 111.49, the scheduled fine is fifteen dollars.

7. *Description of violations.* The descriptions of offenses used in this section are for convenience only and shall not be construed to define any offense or to include or exclude any offense other than those specifically included or excluded by reference to the Code. A reference to a section or subsection of the Code without further limitation includes every offense defined by that section or subsection.

8. *Energy emergency violations.* For violations of an executive order issued by the governor under the provisions of section 93.8, the scheduled fine is fifty dollars.

9. *Radar jamming devices.* For violation of section 321.232, the scheduled fine is ten dollars.

10. *Alcoholic beverage violations.* For violations of section 123.47A, the scheduled fine is fifteen dollars.

11. *Smoking violations.* For violations of section 98A.6, the scheduled fine is ten dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.2 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil fine is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1.

87 Acts, ch 120, §9 SF 311; 87 Acts, ch 170, §19 HF 371; 87 Acts, ch 219, §6 HF 79

1987 amendments to subsection 2, paragraphs c, e, h, and o effective January 1, 1988; 87 Acts, ch 170, §21 HF 371

1987 amendment to subsection 2, paragraph g took effect May 12, 1987

Subsection 2, paragraphs c, e, h and o amended

Subsection 2, paragraph g amended

NEW subsection 11

CHAPTER 809

DISPOSITION OF SEIZABLE AND FORFEITABLE PROPERTY

809.13 Disposition of forfeited property.

1. Any person having control over forfeited property shall communicate that fact to the attorney general or the attorney general's designee.

2. Forfeited property not needed as evidence in a criminal case shall be delivered to the department of justice, or, upon written authorization of the attorney general or the attorney general's designee, the property may be destroyed, sold, or delivered to an appropriate agency for disposal in accordance with this section.

3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

4. Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state. Forfeited property not requisitioned may be delivered to the

director of the department of general services to be disposed of in the same manner as property received pursuant to section 18.15.

5. Notwithstanding subsection 1, 2, 3, or 4, forfeited property which is:

a. A controlled substance or a simulated, counterfeit, or imitation controlled substance shall be disposed of as provided in section 204.506.

b. A weapon or ammunition shall be deposited with the department of public safety to be disposed of in accordance with the rules of the department. All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed. Ammunition and firearms which are not illegal and are not offensive weapons as defined by section 724.1 may be sold by the department as provided in section 809.21.

c. Material in violation of chapter 728 shall be destroyed.

d. Property subject to the rules of the natural resource commission shall be delivered to that commission for disposal in accordance with its rules.

87 Acts, ch 13, §6 SF 269
Subsection 5, paragraph b, affirmed and reenacted effective April 2, 1987; legislative findings; 87 Acts, ch 13, §1, 8 SF 269

809.14 Nonforfeitable interests—purchase of forfeited interests.

1. Property shall not be forfeited under this chapter to the extent of the interest of an owner, other than a joint tenant, who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established by a preponderance of the evidence that the owner permitted the use of the property under circumstances in which the owner knew or should have known that the property was being used for a criminal purpose, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.

2. Upon receipt of forfeited property the attorney general shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within thirty days the option is terminated, unless the time for exercising the option is extended by the attorney general.

3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, shall either be reimbursed to the extent of the nonforfeitable interest or to the extent that the sale of the item produces sufficient revenue to do so, whichever amount is less. The sale of forfeited property should be conducted in a manner which is commercially reasonable and calculated to provide a sufficient return to cover the costs of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date upon which property becomes forfeitable.

4. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the state.

87 Acts, ch 114, §1 SF 341
Subsection 1 amended

809.21 Sale of certain ammunition and firearms.

Ammunition and firearms which are not illegal and which are not offensive weapons as defined by section 724.1 may be sold by the department of public safety at public auction. The sale of ammunition or firearms pursuant to this section shall be made only to federally licensed firearms dealers or to persons who have a permit to purchase the firearms. Persons who have not obtained a permit may bid on firearms at the public auction. However, persons who bid without a permit must post a fifty percent of purchase price deposit with the commissioner of public safety on any winning bid. No transfer of firearms may be made to a person bidding without a permit until such time as the person has obtained a permit. If the person is unable to produce a permit within two weeks from the date

of the auction, the person shall forfeit the fifty percent deposit to the department of public safety. All proceeds of a public auction pursuant to this section, less department expenses reasonably incurred, shall be deposited in the general fund of the state. The department of public safety shall be reimbursed from the proceeds for the reasonable expenses incurred in selling the property at the auction.

87 Acts, ch 13, §7, 8 SF 269

Section affirmed and reenacted effective April 2, 1987; legislative findings; 87 Acts, ch 13, §1, 8 SF 269

CHAPTER 903

MISDEMEANORS

903.1 Maximum sentence for misdemeanants.

1. When a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, if such be the sentence, within the following limits:

a. For a simple misdemeanor, imprisonment not to exceed thirty days, or a fine not to exceed one hundred dollars.

b. For a serious misdemeanor, imprisonment not to exceed one year, or a fine not to exceed one thousand dollars, or both.

2. When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed two years, or a fine not to exceed five thousand dollars, or both. When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.

3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G, or a violation of a county or municipal curfew or traffic ordinance, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court.

The criminal penalty surcharge required by section 911.2 shall be added to a fine imposed on a misdemeanant, and is not a part of or subject to the maximums set in this section.

87 Acts, ch 149, §7 SF 522

Section amended

CHAPTER 905

COMMUNITY-BASED CORRECTIONAL PROGRAM

905.7 Assistance by state department.

The Iowa department of corrections shall provide assistance and support to the respective judicial districts to aid them in complying with this chapter, and shall promulgate rules pursuant to chapter 17A establishing guidelines in accordance with and in furtherance of the purposes of this chapter. The guidelines shall include, but need not be limited to, requirements that each district department:

1. Provide pretrial release, presentence investigations, probation services, parole services, work release services, programs for offenders convicted under chapter 321J, and residential treatment centers throughout the district, as necessary.

2. Locate community-based correctional program services in or near municipalities providing a substantial number of treatment and service resources.

3. Follow practices and procedures which maximize the availability of federal funding for the district department's community-based correctional program and assist the department of transportation which is authorized to follow practices and procedures designed to maximize the availability of federal funding for the enforcement and implementation of drunk driver prevention and other highway safety programs.

4. Provide for gathering and evaluating performance data relative to the district department's community-based correctional program and make other detailed reports to the Iowa department of corrections as requested by the board of corrections or the director of the department of corrections.

5. Maintain personnel and fiscal records on a uniform basis.

6. Provide a program to assist the court in placing defendants who as a condition of probation are sentenced to perform unpaid community service.

7. Provide for community participation in the planning and programming of the district department's community-based correctional program.

87 Acts, ch 118, §6 SF 469
Subsections 1 and 3 amended

905.10 Postinstitutional programs and services.

Persons participating in postinstitutional services, except those persons paroled and those persons contracted to the district department, remain under the jurisdiction of the Iowa department of corrections. The district department of correctional services shall maintain adequate personnel to provide postinstitutional residential services, programs for offenders convicted under chapter 321J, parole services, and supervision of persons transferred into the state under the interstate compact for supervision of parolees and probationers.

87 Acts, ch 118, §7 SF 469
Section amended

CHAPTER 906

PAROLES AND WORK RELEASE

906.5 Record reviewed—eligibility of prior forcible felon for parole or work release—rules.

Within one year after the commitment of a person other than a class "A" felon to the custody of the director of the Iowa department of corrections, a member of the board shall interview the person. Thereafter, at regular intervals, not to exceed one year, the board shall interview the person and consider the person's prospects for parole or work release. At the time of an interview, the board shall consider all pertinent information regarding the person, including the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work, and attitude in prison, and the reports of physical and mental examinations that have been made.

If the person who is under consideration for parole is serving a sentence for conviction of a felony and has a criminal record of one or more prior convictions for a forcible felony or a crime of a similar gravity in this or any other state, parole shall be denied unless the person has served at least one-half of the maximum term of the defendant's sentence. However, the mandatory sentence provided for by this section does not apply if:

1. The sentence being served is for a felony other than a forcible felony and the sentences for the prior forcible felonies expired at least five years before the date of conviction for the present felony.

2. The sentence being served is on a conviction for operating a motor vehicle while under the influence of alcohol or a drug under chapter 321J.

A person while on parole or work release is under the supervision of the district department of correctional services of the district designated by the board of parole. The department of corrections shall prescribe rules for governing persons on parole or work release. The board may adopt other rules not inconsistent with the rules of the department of corrections as the board deems proper or necessary for the performance of its functions.

87 Acts, ch 118, §8 SF 469
Unnumbered paragraph 2 amended

906.9 Clothing, transportation, and money.

When an inmate is discharged, paroled, placed on work release, or placed in a community-based correctional program under section 246.513, the warden or superintendent shall furnish the inmate, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, work release plan, or community-based corrections assignment. When an inmate is discharged, paroled, placed on work release, or placed in a community-based correctional program under section 246.513, the warden or superintendent shall provide the inmate, at state expense, money in accordance with the following schedule:

1. Upon discharge or parole, one hundred dollars.
2. Upon being placed on work release, fifty dollars.
3. Upon going from an educational work release to parole or discharge, fifty dollars.
4. Upon being placed in a community-based correctional program under section 246.513, fifty dollars.

Those inmates receiving payment under subsection 2, 3, or 4 shall not be eligible for payment under subsection 1 unless they are returned to the institution. The warden or superintendent shall maintain an account of all funds expended pursuant to this section.

87 Acts, ch 118, §9 SF 469
Section amended

CHAPTER 909

FINES

909.8 Payment and collection provisions apply to criminal penalty surcharge.

The provisions of this chapter governing the payment and collection of a fine also apply to the payment and collection of a criminal penalty surcharge imposed pursuant to chapter 911.

87 Acts, ch 72, §1 HF 487
NEW section

CHAPTER 910A

VICTIM AND WITNESS PROTECTION ACT

910A.15 Guardian ad litem for prosecuting witnesses.

A prosecuting witness who is a child, as defined in section 702.5, in a case involving a violation of chapter 709 or section 726.2, 726.3, 726.6, or 728.12, is entitled to have the witness's interests represented by a guardian ad litem at all stages of the proceedings arising from such violation. The guardian ad litem may but need not be a practicing attorney and shall be designated by the court after due consideration is given to the desires and needs of the child and the compatibility of the child and the child's interests with the prospective guardian

ad litem. However, a person who is also a prosecuting witness in the same proceeding shall not be designated guardian ad litem. The guardian ad litem shall receive notice of and may attend all depositions, hearings and trial proceedings to support the child and advocate for the protection of the child but shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. However, the guardian ad litem shall file reports to the court as required by the court.

References in this section to a guardian ad litem shall be interpreted to include references to a court appointed special advocate as defined in section 232.2, subsection 9A.

87 Acts, ch 121, §6 HF 515
Section amended

CHAPTER 911

SURCHARGE ADDED TO CRIMINAL PENALTIES

911.2 Surcharge.

When a court imposes a fine or forfeiture for a violation of a state law, or of a city or county ordinance except an ordinance regulating the parking of motor vehicles, the court shall assess an additional penalty in the form of a surcharge equal to fifteen percent of the fine or forfeiture imposed. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses. When a fine or forfeiture is suspended in whole or in part, the surcharge shall be reduced in proportion to the amount suspended.

The surcharge is subject to the provisions of chapter 909 governing the payment and collection of fines, as provided in section 909.8.

87 Acts, ch 72, §2 HF 487
Section amended

CHAPTER 912

CRIME VICTIM REPARATION PROGRAM

912.4 Application for reparation.

1. To claim a reparation under the crime victim reparation program, a person shall apply in writing on a form prescribed by the director* and file the application with the director within one hundred eighty days after the date of the crime, or of the discovery of the crime, or within one hundred twenty days after the date of death of the victim. The director may extend the time limit for the filing of an application to up to one year after the date of the crime, the discovery of the crime, or the death of the victim upon a finding of good cause. Lack of awareness of the crime victim reparations program by a prospective applicant alone shall not constitute good cause.

2. A person is not eligible for reparation unless the crime was reported to the local police department or county sheriff department within twenty-four hours of its occurrence. However, if the crime cannot reasonably be reported within that time period, the crime shall have been reported within twenty-four hours of the time a report can reasonably be made.

3. Notwithstanding subsection 2, a victim under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for reparation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in section 232.68, subsection

6, and was reported to an employee of the department of human services and the employee verifies the report to the director.

4. When immediate or short-term medical services or mental health services are provided to a victim under section 910A.16, the department of human services shall file the claim for reparation as provided in subsection 3 for the victim and the provisions of section 912.7, subsection 2, paragraphs "b" and "c" do not apply.

5. When immediate or short-term medical services to a victim are provided pursuant to section 910A.16 by a professional licensed or certified by the state to provide such services, the professional shall file the claim for reparation, unless the department of human services is required to file the claim under this section, and the provisions of section 912.7, subsection 2, paragraphs "b" and "c" do not apply. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

87 Acts, ch 7, §1 SF 158

*"Commissioner" is used elsewhere in this chapter; 86 Acts, ch 1245 changed the title to "director" and the rest of chapter 912 will be changed in the 1989 Code

Subsection 1 amended

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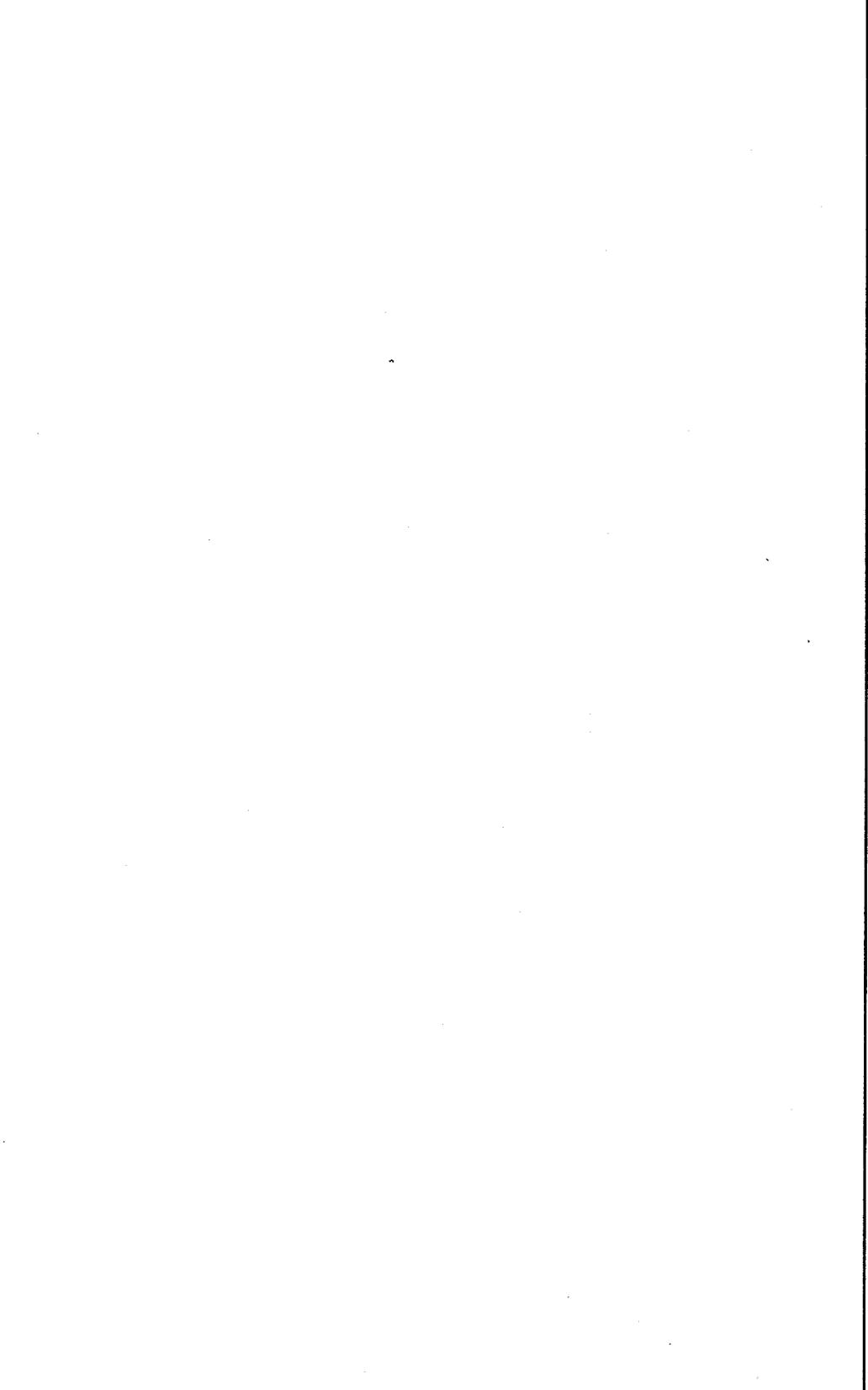
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CODE EDITOR'S NOTES

Code Section,
Chapter,
or Chapter part

- Ch. 10A, Art. VII** 1987 Acts, chapter 115, sections 14 through 17 and 68 changed the gaming division's name to "racing and gaming division". 1987 Acts, chapter 234, sections 421, 438, and 440, the later enactments, repealed one of those changes in the process of moving the division to the Department of Inspections and Appeals and used the name "gaming division". The sections have been codified as enacted and corrective legislation is pending.
- Sec. 17.22** Although the lead-in of 1987 Acts, chapter 20, section 1, indicates that it amends this section, it appears from the text that only unnumbered paragraph 1 of the section was intended, and the amendment has been so codified.
- Sec. 96.3** Although the lead-in of 1987 Acts, chapter 111, section 9, indicates that it amends unnumbered paragraph 3 of the section, it appears from the text that it amends unnumbered paragraph 2, the same paragraph which was stricken by 1987 Acts, chapter 222, section 1. The section has been so codified.
- Sec. 96.7** Amendments to subsections 8 and 9 of this section in 1987 Acts, chapter 111, sections 10 and 11, were applied to the same material in subsections 7 and 8 as renumbered in the amendment by 1987 Acts, chapter 222, section 4.
- Sec. 106.2** 1987 Acts, chapter 134, section 1, added a new definition of "manufacturer" without striking the existing definition. Under sections 4.8 and 4.11, Code 1987, it appears that the later enactment, here codified as subsection 14, prevails. Corrective legislation is pending.
- Sec. 135.11(17)** It appears that the amendments do not conflict, so they were harmonized as required under section 4.11, Code 1987.
- Sec. 137.6** Although the lead-in of 1987 Acts, chapter 43, section 4, indicates that it amends subsection 2, paragraph d, it appears from the text that only unnumbered paragraph 1 of paragraph d was intended, and the amendment has been so codified.
- Ch. 155** Amendments to chapter 155 by 1987 Acts, chapter 119, sections 3 through 7, and 1987 Acts, chapter 233, section 429, were superseded by the repeal of chapter 155 by 1987 Acts, chapter 215, section 49, under the general rule that a strike or repeal usually prevails over an amendment to the same material.
- Sec. 175.2(3)** There was no substantive conflict to prevent harmonizing the two amendments as required under section 4.11, Code 1987, but the verb form "intending" was changed to "intends" to make the grammar consistent.
- Sec. 220.104(2)** Although the lead-in of 1987 Acts, chapter 115, section 33, indicates that it amends subsection 2, it appears from the text that only the first paragraph of the subsection was intended, and the amendment has been so codified.

CODE EDITOR'S NOTES

Code Section, Chapter, or Chapter part

- Sec. 232.13** Although 1987 Acts, chapter 121, section 3, struck and reinserted this section, there was no difficulty in harmonizing it with the amendment in 1987 Acts, chapter 24, section 1, so this was done as required by section 4.11, Code 1987.
- Sec. 256.7** 1987 Acts, chapter 211, section 19, provided that section 2 of that Act, now subsection 10 of section 256.7, prevails over subsection 8 (now 9), unnumbered paragraph 4, in 1987 Acts, chapter 207, section 1, so unnumbered paragraph 4 has been omitted in codification.
- Sec. 256.11(10b)** The two amendments conflict in the number of registered voters required under this paragraph. Both Acts were signed by the governor on the same day. Since 1987 Acts, chapter 233, was passed by the General Assembly on May 10, 1987, and 1987 Acts, chapter 224, was passed by the General Assembly on May 4, 1987, the language of chapter 233 which was passed later has been codified.
- Sec. 303.75** Since new subsection 6 in 1987 Acts, chapter 211, section 7, was identical to existing subsection 3 in Code 1987 (now subsection 5), it was omitted in the codification.
- Sec. 304A.24** Although the lead-in of 1987 Acts, chapter 204, section 2, indicates that it amends this section, it appears from the text that only unnumbered paragraph 1 of the section was intended, and the amendment has been so codified.
- Sec. 321.20** The substance of the two amendments was harmonized as required by section 4.11, Code 1987. Where the form was in conflict, 1987 Acts, chapter 108, section 1, the later enactment, was codified.
- Sec. 321.24** The substance of the two amendments was harmonized as required by section 4.11, Code 1987. Where there were technical conflicts, 1987 Acts, chapter 130, section 1, the later enactment, was codified.
- Sec. 321.198** The amendments conflicted in specific language, and were signed by the governor on the same day. 1987 Acts, chapter 167, the latest to be passed by the General Assembly, has been codified. It appears that the effect of the two amendments is the same.
- Sec. 358A.6** The amendments could be harmonized in substance as required by section 4.11, Code 1987. Where there were technical conflicts the language of 1987 Acts, chapter 43, section 12, the later enactment, was codified.
- Sec. 422.4** Although 1987 Acts, Second Extraordinary Session, chapter 1, generally amended the unpublished copy of this Code Supplement, those amendments have been incorporated into this published Code Supplement for the convenience of the user. Footnotes indicate the applicability of the amendments.
- Although the lead-in of 1987 Acts, chapter 224, section 65, did not mention subsection 1 in describing the placement of the new unnumbered paragraph, it is apparent from the text that it was intended to become unnumbered paragraph 5 of subsection 1, and it has been so codified.
- Sec. 422.13(5)** The amendments were nearly identical. 1987 Acts, chapter 214, section 3, the later enactment, was codified, and it appears that its effective date applies.

CODE EDITOR'S NOTES

**Code Section,
Chapter,
or Chapter part**

- Sec. 422.16(11a)** 1987 Acts, chapter 115, section 55, has been codified. 1987 Acts, First Extraordinary Session, chapter 1, section 26, repealed the amendment in 1987 Acts, chapter 214, section 4.
- Sec. 455B.306(3)** Certain text which appeared in the first paragraph of this subsection in Code 1987 was omitted in the enrolled bill but not shown as stricken. It is apparent from the context that the intent was to strike the omitted language, and under the general rule that the actual words of text in the enrolled bill generally reflect the legislative intent, the paragraph has been codified as it appeared in the enrolled bill.
- Sec. 467A.61(2)** Although the lead-in of 1987 Acts, chapter 23, section 38, indicates that it amends subsection 2, it appears from the text that only unnumbered paragraph 1 of subsection 2 was intended, and the amendment has been so codified.
- Sec. 537.5201** Although the lead-in of 1987 Acts, chapter 80, section 51, indicates that it amends paragraph 1, it appears from the text that only unnumbered paragraph 1 of subsection 1 was intended, and the amendment has been so codified.



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